

---

# TEXAS REGISTER

*Volume 30 Number 32*

*August 12, 2005*

*Pages 4517-4756*

---



*Tony Bloom*  
*12th Grade*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

***Texas Register*, (ISSN 0362-4781)**, is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year \$240. First Class mail subscriptions are available at a cost of \$300 per year. Single copies of most issues for the current year are available at \$10 per copy in printed format.

Material in the ***Texas Register*** is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the ***Texas Register*** Director, provided no such republication shall bear the legend ***Texas Register*** or "Official" without the written permission of the director.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Austin, Texas and additional mailing offices.

**POSTMASTER:** Send address changes to the ***Texas Register***, P.O. Box 13824, Austin, TX 78711-3824.



a section of the  
Office of the Secretary of State  
P.O. Box 13824  
Austin, TX 78711-3824  
(800) 226-7199  
(512) 463-5561  
FAX (512) 463-5569  
<http://www.sos.state.tx.us>  
[subadmin@sos.state.tx.us](mailto:subadmin@sos.state.tx.us)

**Secretary of State –**  
Roger Williams  
**Director -** Dan Procter

**Staff**  
Ada Aulet  
Leti Benavides  
Dana Blanton  
Carla Carter  
Kris Hogan  
Robert Knight  
Jill S. Ledbetter  
Juanita Ledesma  
Diana Muniz  
Shadrock Roberts

# IN THIS ISSUE

## **GOVERNOR**

Proclamation 41-3017 .....4523

## **ATTORNEY GENERAL**

Opinions .....4525

## **TEXAS ETHICS COMMISSION**

Advisory Opinion Request.....4527

## **EMERGENCY RULES**

### **TEXAS HIGHER EDUCATION COORDINATING BOARD**

#### **RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS**

19 TAC §4.3 .....4529

19 TAC §4.9 .....4529

#### **STUDENT SERVICES**

19 TAC §21.122, §21.124 .....4530

19 TAC §§21.953, 21.954, 21.956, 21.959 .....4531

19 TAC §21.1083 .....4532

### **TEACHER RETIREMENT SYSTEM OF TEXAS**

#### **MEMBERSHIP CREDIT**

34 TAC §25.30 .....4532

34 TAC §25.35 .....4533

#### **BENEFITS**

34 TAC §29.4, §29.12 .....4535

34 TAC §29.72 .....4536

#### **EMPLOYMENT AFTER RETIREMENT**

34 TAC §31.41 .....4536

#### **HEALTH CARE AND INSURANCE PROGRAMS**

34 TAC §41.4 .....4537

#### **GENERAL ADMINISTRATION**

34 TAC §51.12 .....4538

## **PROPOSED RULES**

### **OFFICE OF THE SECRETARY OF STATE**

#### **GENERAL POLICIES AND PROCEDURES**

1 TAC §71.8, §71.14 .....4541

1 TAC §71.83 .....4542

#### **ELECTIONS**

1 TAC §81.18 .....4543

### **TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

#### **REIMBURSEMENT RATES**

1 TAC §355.103 .....4544

### **CHILDREN'S HEALTH INSURANCE PROGRAM**

1 TAC §361.1 .....4545

### **STATE CHILDREN'S HEALTH INSURANCE PROGRAM**

1 TAC §§370.401, 370.403, 370.405, 370.407 .....4546

### **TEXAS DEPARTMENT OF AGRICULTURE**

#### **PESTICIDES**

4 TAC §7.10 .....4548

4 TAC §§7.20, 7.23, 7.24 .....4548

4 TAC §7.35 .....4549

### **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

#### **MANUFACTURED HOUSING**

10 TAC §80.10 .....4553

10 TAC §80.11 .....4554

10 TAC §80.20 .....4557

10 TAC §§80.53 - 80.58, 80.62, 80.64, 80.66 .....4558

10 TAC §§80.119 - 80.123, 80.125 - 80.133, 80.135 .....4569

10 TAC §§80.180, 80.181, 80.183 .....4584

10 TAC §§80.201, 80.205, 80.208 .....4584

10 TAC §80.240 .....4587

10 TAC §80.260 .....4588

#### **MANUFACTURED HOUSING**

10 TAC §§80.50 - 80.52, 80.63 .....4590

10 TAC §§80.123, 80.124, 80.129, 80.134, 80.136, 80.137 .....4590

10 TAC §80.181, §80.182 .....4590

10 TAC §§80.200, 80.202 - 80.204, 80.206, 80.207, 80.209 .....4591

### **TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### **ELECTRICIANS**

16 TAC §§73.10, 73.20 - 73.28, 73.40, 73.53, 73.60, 73.70, 73.80 .....4591

### **TEXAS HIGHER EDUCATION COORDINATING BOARD**

#### **RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS**

19 TAC §4.3 .....4595

19 TAC §4.9 .....4596

#### **RULES APPLYING TO PUBLIC UNIVERSITIES AND/OR HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS**

19 TAC §5.24 .....4597

STUDENT SERVICES	
19 TAC §21.122, §21.124 .....	4598
19 TAC §§21.953, 21.954, 21.956, 21.959 .....	4599
19 TAC §21.1083 .....	4600

## **TEXAS EDUCATION AGENCY**

PLANNING AND ACCOUNTABILITY	
19 TAC §97.1001 .....	4601
19 TAC §97.1002, §97.1007 .....	4602

## **TEXAS DEPARTMENT OF INSURANCE**

TITLE INSURANCE	
28 TAC §9.1 .....	4605
28 TAC §9.401 .....	4605

## **TEACHER RETIREMENT SYSTEM OF TEXAS**

MEMBERSHIP CREDIT	
34 TAC §25.30 .....	4605
34 TAC §25.35 .....	4606
BENEFITS	
34 TAC §29.4, §29.12 .....	4608
34 TAC §29.72 .....	4609

EMPLOYMENT AFTER RETIREMENT	
34 TAC §31.41 .....	4610

HEALTH CARE AND INSURANCE PROGRAMS	
34 TAC §41.4 .....	4611

GENERAL ADMINISTRATION	
34 TAC §51.12 .....	4612

## **TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM**

PRACTICE AND PROCEDURE REGARDING CLAIMS	
34 TAC §101.16 .....	4613

CREDITABLE SERVICE	
34 TAC §105.2 .....	4614
34 TAC §105.3 .....	4615
34 TAC §105.5 .....	4615

MISCELLANEOUS RULES	
34 TAC §107.10 .....	4617
34 TAC §107.11 .....	4617
34 TAC §107.12 .....	4618

## **DEPARTMENT OF AGING AND DISABILITY SERVICES**

MENTAL RETARDATION SERVICES--MEDICAID STATE OPERATING AGENCY RESONSIBILITIES	
40 TAC §9.254 .....	4618

NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION	
40 TAC §19.2601 .....	4620

## **DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES**

GENERAL ADMINISTRATION	
40 TAC §702.413 .....	4622

PREVENTION AND EARLY INTERVENTION SERVICES	
40 TAC §§704.401, 704.403, 704.405, 704.407, 704.409, 704.411 .....	4622

LICENSING	
40 TAC §§745.615, 745.623, 745.625, 745.626, 745.631, 745.637 .....	4623

## **TEXAS DEPARTMENT OF TRANSPORTATION**

EMPLOYMENT PRACTICES	
43 TAC §4.13 .....	4625

RAIL FACILITIES	
43 TAC §7.11 .....	4625

TRANSPORTATION PLANNING AND PROGRAMMING	
43 TAC §15.4 .....	4627

## **WITHDRAWN RULES**

## **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

MANUFACTURED HOUSING	
10 TAC §80.10 .....	4629
10 TAC §80.11 .....	4629
10 TAC §80.20 .....	4629
10 TAC §§80.50 - 80.52, 80.63 .....	4629
10 TAC §§80.53 - 80.59, 80.62, 80.64, 80.66 .....	4629
10 TAC §§80.119 - 80.133, 80.135 .....	4629
10 TAC §§80.129, 80.134, 80.136, 80.137 .....	4630
10 TAC §80.181, §80.182 .....	4630
10 TAC §80.183 .....	4630
10 TAC §§80.200, 80.202 - 80.204, 80.206 - 80.209 .....	4630
10 TAC §80.201 .....	4630
10 TAC §80.205 .....	4630
10 TAC §80.240 .....	4631



10 TAC §80.260 .....	4631
----------------------	------

## **ADOPTED RULES**

### **COMMISSION ON STATE EMERGENCY COMMUNICATIONS**

#### **REGIONAL PLANS--STANDARDS**

1 TAC §251.6 .....	4633
1 TAC §251.12 .....	4633

#### **FINANCE**

1 TAC §255.2 .....	4633
--------------------	------

### **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

#### **MULTIFAMILY HOUSING REVENUE BOND RULES**

10 TAC §§33.1 - 33.10 .....	4634
10 TAC §§33.1 - 33.10 .....	4634

### **TEXAS HIGHER EDUCATION COORDINATING BOARD**

#### **AGENCY ADMINISTRATION**

19 TAC §§1.116 - 1.120 .....	4641
------------------------------	------

#### **RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS**

19 TAC §§4.101 - 4.108 .....	4641
19 TAC §§4.101 - 4.108 .....	4642
19 TAC §§4.151 - 4.161 .....	4646

#### **CAMPUS PLANNING**

19 TAC §17.101 .....	4648
----------------------	------

#### **STUDENT SERVICES**

19 TAC §21.255 .....	4649
19 TAC §§21.710 - 21.717 .....	4650
19 TAC §§21.710 - 21.716 .....	4650

#### **GRANT AND SCHOLARSHIP PROGRAMS**

19 TAC §§22.162, 22.166, 22.167 .....	4650
19 TAC §§22.168 - 22.172 .....	4651
19 TAC §§22.168 - 22.171 .....	4651

## **RULE REVIEW**

### **Proposed Rule Reviews**

Texas Department of Licensing and Regulation .....	4653
--	------

## **TABLES AND GRAPHICS**

.....	4655
-------	------

## **IN ADDITION**

### **Texas Department of Agriculture**

Cotton Administrative Penalty Matrix .....	4715
--	------

### **Office of the Attorney General**

Agreed Final Judgment .....	4715
Agreed Final Judgment .....	4716

### **Texas Building and Procurement Commission**

Request for Proposals .....	4716
-----------------------------	------

### **Central Texas Regional Mobility Authority**

Notice of Availability .....	4716
------------------------------	------

### **Coastal Coordination Council**

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program .....	4717
--	------

### **Office of Consumer Credit Commissioner**

Notice of Rate Ceilings .....	4717
-------------------------------	------

### **East Texas Council of Governments**

Notice of Request for Proposals for Operation and Management of East Texas Workforce Centers .....	4718
--	------

### **Texas Education Agency**

Request for Applications Concerning Open-Enrollment Charter Guidelines and Application .....	4718
Request for Applications Concerning Public Senior College/University Open-Enrollment Charter Guidelines and Application .....	4719

### **Employees Retirement System of Texas**

Consultant Contract Awards Announcement .....	4720
---	------

### **Texas Commission on Environmental Quality**

Notice of District Petition .....	4720
Notice of Public Hearings by the Texas Commission on Environmental Quality on Proposed Revisions to the State Implementation Plan .....	4721
Notice of Water Quality Applications .....	4722
Notice of Water Rights Application .....	4723

### **Texas Public Finance Authority**

Request for Proposals for Underwriting Services .....	4723
---	------

### **General Land Office**

Notice of Invitation for Offer for Renewal of Major Consulting Services .....	4724
---	------

### **Department of State Health Services**

Licensing Actions for Radioactive Materials .....	4724
Notice of Agreed Order with Northstar Surgical Center .....	4727

### **Houston-Galveston Area Council**

Request for Proposal .....	4727
----------------------------	------

### **Texas Department of Insurance**

Company Licensing .....	4728
-------------------------	------

Notice of Public Hearing .....	4728
--------------------------------	------

### **Texas Lottery Commission**

Instant Game Number 606 "Blackjack Doubler" .....	4728
Instant Game Number 607 "Lucky 5's" .....	4732
Instant Game Number 614 "Holiday Cash" .....	4736
Instant Game Number 616 "Sleigh Ride Riches" .....	4740
Instant Game Number 617 "Winter Treasures" .....	4744

### **Manufactured Housing Division**

Notice of Public Hearing .....	4749
--------------------------------	------

### **Texas Parks and Wildlife Department**

Notice of Availability and Request for Public Comment .....	4750
---	------

### **Public Utility Commission of Texas**

Notice of Application for a Certificate to Provide Retail Electric Service .....	4751
Notice of Application for Amendment to Service Provider Certificate of Operating Authority .....	4751
Notice of Application for Service Provider Certificate of Operating Authority .....	4751

Notice of Application to Amend Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider ..	4752
--	------

Notice of Petition for Expanded Local Calling Service.....	4752
--	------

Notice of Proceeding for 2005 Annual State Certification for Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.....	4752
---	------

### **Texas Department of Transportation**

Aviation Division--Request for Proposal for Aviation Engineering Services .....	4753
---	------

Aviation Division--Request for Proposal for Aviation Engineering Services .....	4753
---	------

Aviation Division--Request for Proposal for Aviation Engineering Services .....	4754
---	------

Aviation Division--Request for Proposal for Professional Services .....	4754
---	------

Request for Proposals--Transportation Law Matters .....	4755
---	------

### **Texas Water Development Board**

Applications Received .....	4756
-----------------------------	------

# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Proclamation 41-3017

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, education is the foundation for the economic and cultural future of the state of Texas and the constitutional responsibility for the development of an efficient system of public education rests with the legislature; and

WHEREAS, the current state of public school finance requires immediate action by the legislature to ensure the continued efficient and effective operation of Texas schools; and

WHEREAS, the people have placed the constitutional power to call and convene the legislature into special session in the hands of the Chief Executive Officer of the State;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, by the authority vested in me by Article IV, Section 8, of the Texas Constitution, do hereby call an extraordinary session of the 79th Legislature, to be convened in the city of Austin, commencing at 10 a.m. on Thursday the 21st day of July 2005, for the following purposes:

To consider legislation to limit the ad valorem tax appraisals and rates of certain taxing units.

To consider legislation that provides ad valorem tax relief and protects taxpayers.

To consider legislation to increase the homestead ad valorem tax exemption.

The Secretary of State will take notice of this action and will notify the members of the Legislature of my action.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 20th day of July 2005.

Rick Perry, Governor

Attested By: Roger Williams, Secretary of State

TRD-200503226

◆ ◆ ◆

# THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are

requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

## Opinions

### Opinion No. GA-0342

The Honorable Michael S. Wenk

Hays County Criminal District Attorney

Hays County Justice Center

110 East Martin Luther King

San Marcos, Texas 78666

Re: Whether a home-rule city may change the city's date for general elections through an amendment to the city's charter (RQ-0312-GA)

### SUMMARY

Section 41.0052(a) of the Texas Election Code clearly establishes a deadline after which a home-rule municipality may not change the standing date for its general elections. As currently written, section 41.0052(a) imposes a December 31, 2004 deadline, and a charter amendment changing the date of the election enacted after that statutory deadline conflicts with state law and is, therefore, preempted by the statute. Because we construe the term "governing body," as used in section 41.0052(a) and as it pertains to home-rule cities, to include the legislative authority of the citizenry as provided for by the city charter, this deadline also precludes the citizens of the City from changing the date through a charter amendment. As it has done in the past, the Seventy-ninth Legislature extended the section 41.0052(a) deadline. When House Bill 57 becomes effective on October 1, 2005, a municipality is again free to change its general election date by council or citizen action as authorized by law.

### Opinion No. GA-0343

The Honorable Joel D. Littlefield

Hunt County Attorney

Post Office Box 1097

Greenville, Texas 75403-1097

Re: Whether the Department of Housing and Community Affairs must revoke the statement of ownership and location, issued under Occupations Code section 1201.207, of a manufactured home when the home has been relocated without the payment of ad valorem taxes (RQ-0313-GA)

### SUMMARY

A tax lien that has attached to a manufactured home under section 32.01(a) of the Tax Code must be listed on a statement of ownership and location (a "Statement") issued by the Texas Department of Housing and Community Affairs under Occupations Code section 1201.205(6). The Department may refuse to issue or may suspend or revoke a Statement that is based on false or fraudulent information regarding an existing tax lien. In addition, the Department may refuse to issue or may suspend or revoke a Statement for a manufactured home that was relocated without a relocation permit from the Department of Transportation or with a relocation permit obtained without truthful information regarding taxes due on the home.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200503212

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: August 3, 2005

◆ ◆ ◆

# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Advisory Opinion Request

**AOR-527.** The Texas Ethics Commission has been asked to consider whether a non-judicial officeholder who is seeking a judicial office is required to file a single campaign finance report combining both non-judicial and judicial activity.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes:

- (1) Chapter 572, Government Code;
- (2) Chapter 302, Government Code;
- (3) Chapter 303, Government Code;
- (4) Chapter 305, Government Code;
- (5) Chapter 2004, Government Code;

(6) Title 15, Election Code;

(7) Chapter 36, Penal Code; and

(8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200503095

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Filed: July 28, 2005

◆ ◆ ◆

# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 19 TAC §4.3

The Texas Higher Education Coordinating Board adopts, on an emergency basis, an amendment to §4.3 concerning an excused absence from a public institution of higher education for a person called to active military service. The amendment is adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The amendment is simultaneously being proposed for permanent adoption in this issue of the *Texas Register*. Specifically, this amendment is being adopted on an emergency basis under the provisions of House Bill 1630 of the 79th Texas Legislature, which added Texas Education Code, §51.9111 and authorized the Board to implement changes by Fall semester, 2005. This amendment will provide a way for a student to be assured of an excused absence and a reasonable amount of time to complete missed assignments and examinations, in order to be able to complete coursework left pending if the student is called to active military duty for a brief duration of service. A student called to active military duty as defined in this section would still be able to withdraw from coursework, but the change would provide for a student who chooses not to do so under these specific circumstances.

The amendment is adopted under the Texas Education Code, §2001.034, which gives the Coordinating Board the authority to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice, and Texas Education Code, §51.9111, which authorized the Coordinating Board to adopt rules concerning excused absences for military service.

The amendment affects Texas Education Code, §61.002.

###### §4.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (16) (No change.)

(17) Active military service--Active service in the armed forces of the United States or in the National Guard or the Texas State Guard.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503176

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective Date: August 1, 2005

Expiration Date: November 28, 2005

For further information, please call: (512) 427-6114



###### 19 TAC §4.9

The Texas Higher Education Coordinating Board adopts, on an emergency basis, new §4.9, concerning an excused absence from a public institution of higher education for a person called to active military service.

The new section is adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The new section is simultaneously being proposed for permanent adoption in this issue of the *Texas Register*. Specifically, this new section is being adopted on an emergency basis under the provisions of House Bill 1630 of the 79th Texas Legislature, which added Texas Education Code, §51.9111 and authorized the Board to implement changes by Fall semester, 2005. This new section will provide a way for a student to be assured of an excused absence and a reasonable amount of time to complete missed assignments and examinations, in order to be able to complete coursework left pending if the student is called to active military duty for a brief duration of service. A student called to active military duty as defined in this section would still be able to withdraw from coursework, but the new rule would provide for a student who chooses not to do so under these specific circumstances.

The new section is adopted, on an emergency basis under the Texas Education Code, §2001.034, which gives the Coordinating Board the authority to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice, and Texas Education Code, §51.9111, which authorized the Coordinating Board to adopt rules concerning excused absences for military service.

The new section affects Texas Education Code, §61.002.

§4.9. Excused Absence for a Person Called to Active Military Service.

(a) Upon notice from a student required to participate in active military service, an institution shall excuse a student from attending classes or engaging in other required activities, including examinations.

(b) A student shall not be penalized for an absence which is excused under this subsection and shall be allowed to complete an assignment or take an examination from which the student is excused within a reasonable time after the absence.

(c) Each institution shall adopt a policy under this subsection which includes:

(1) the retention of a student's course work completed during the portion of the course prior to the student being called to active military service;

(2) the course syllabus or other instructional plan, so that the student will be able to complete the course without prejudice and under the same course requirements that were in effect when the student enrolled in the course;

(3) a definition of a reasonable time after the absence for the completion of assignments and examinations;

(4) procedures for failure of a student to satisfactorily complete the assignment or examination within a reasonable time after the absence; and

(5) an institutional dispute resolution process regarding the policy.

(d) The maximum period for which a student may be excused under this section shall be no more than 25% (twenty-five percent) of the total number of class meetings (not including the final examination period) for the specific course or courses in which the student is currently enrolled at the beginning of the period of active military service.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503178

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective Date: August 1, 2005

Expiration Date: November 28, 2005

For further information, please call: (512) 427-6114



## CHAPTER 21. STUDENT SERVICES

### SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

#### 19 TAC §21.122, §21.124

The Texas Higher Education Coordinating Board adopts, on an emergency basis, amendments to §21.122 and §21.124, concerning initial eligibility for the Texas B-On-Time Loan Program.

The amendments to the sections are adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less

than 30 days notice. The amendments are simultaneously being proposed for permanent adoption in this issue of the *Texas Register*. The amendments extend the residency requirement in the Texas B-On-Time Loan Program to include military dependents that are entitled to pay resident tuition rates. Currently, loan eligibility is limited to students who are Texas residents and who graduated from a Texas high school. The amendments provide that a military dependent who graduated from a Department of Defense high school not earlier than the 2002 - 2003 school year and who, at the time of graduation, was a dependent of a member of the U.S. armed forces, is eligible for the Texas B-On-Time Loan.

The amendments are adopted, on an emergency basis, under the Texas Education Code, §§56.451 - 56.465, which provide the Coordinating Board authority to establish procedures to administer this program; the Texas Education Code, §61.027, which provides the Coordinating Board authority to adopt rules to effectuate the provisions of the Texas Education Code. Section 54.053 states that the governing board of each institution required to charge a nonresident tuition fee, is subject to the rules, regulations, and interpretations issued by the Coordinating Board.

The amendments affect the Texas Education Code, §§56.451 - 56.465.

#### §21.122. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (4) (No change.)

(5) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determining Residence Status). Nonresident students eligible to pay resident tuition rates are not included unless they qualify as eligible nonresidents under §21.124(a)(1) of this title (concerning Initial Eligibility for Loans).

#### §21.124. Initial Eligibility for Loans.

(a) The Commissioner may authorize Texas B-On-Time Loans to students at any eligible institution which certifies that the student:

(1) is a resident of Texas as defined in these rules or beginning with the 2005-2006 academic year, be entitled, as a child of a member of the armed forces of the United States, to pay tuition at the rate provided for residents of this state under Texas Education Code §54.058; and

(2) meets one of the following academic requirements:

(A) graduated not earlier than the 2002 - 2003 school year under the Recommended or Advanced High School Program from a public or accredited private high school in Texas [or received an associate degree from an eligible institution not earlier than May 1, 2005];

(B) beginning with the 2005 - 2006 academic year, graduated not earlier than the 2002 - 2003 school year from a high school operated by the United States Department of Defense and at the time of graduation was a dependent child of a member of the armed forces of the United States; or

(C) received an associate degree from an eligible institution not earlier than May 1, 2005;

(3) - (5) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503170

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective Date: August 1, 2005

Expiration Date: November 28, 2005

For further information, please call: (512) 427-6114



## SUBCHAPTER CC. EARLY HIGH SCHOOL GRADUATION SCHOLARSHIP PROGRAM

### 19 TAC §§21.953, 21.954, 21.956, 21.959

The Texas Higher Education Coordinating Board adopts, on an emergency basis, amendments to §§21.953, 21.954, 21.956, and 21.959, concerning the Early High School Graduation Scholarship Program.

The amendments to the sections are adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The amendments are simultaneously being proposed for permanent adoption in this issue of the *Texas Register*. Senate Bill 1227, 79th Legislature, Regular Session, mandates that students who were on track to graduate in keeping with Early High School Graduation Scholarship requirements in 2003 (when requirements were changed), be grandfathered into the program if they graduated prior to September 1, 2005, while meeting the old program requirements. Since 2003, one of the requirements for a scholarship through the program is the completion of the Recommended High School Program or Distinguished High School Program. Prior to that time, any student who graduated within 36 months of the start of ninth grade could receive an award, regardless of the conditions of their graduation. The amendments would reflect the extension of eligibility to these students in keeping with Senate Bill 1227.

The amendments are adopted, on an emergency basis, under the Texas Education Code, §56.209, which states that the Coordinating Board is authorized to adopt rules to administer the Early High School Graduation Scholarship Program.

The amendments affect the Texas Education Code, §§56.202 - 56.209.

#### §21.953. *Eligible Students.*

(a) To receive an award through the Early High School Graduation Scholarship Program, a student who graduated from high school before September 1, 2003 or who graduated between September 1, 2003 and September 1, 2005, under conditions listed in subsection (b) of this section must:

(1) - (4) (No change.)

(b) A student who graduated between September 1, 2003 and September 1, 2005, without completing the Recommended or Advanced High School Program, may receive an award through the Early High School Graduation Scholarship as it existed on August 31, 2003, if the student's high school counselor provides the Board

a certified statement that the student was on track as of August 31, 2003, to graduate in accordance with Early High School Graduation Scholarship program requirements in place at that time, and the student graduated meeting requirements listed in subsection (a) of this section.

(c) [(b)] To receive an award through the Early High School Graduation Scholarship Program, a student other than those described in subsection (b) of this section who graduated from high school after September 1, 2003 must:

- (1) be a resident of Texas;
- (2) have attended high school only in Texas;

(3) have successfully completed the Recommended or Advanced High School Program established under Texas Education Code, §28.025, unless the principal or other authorized representative of the student's high school indicates on the student's transcript and exemption program application that the courses in the Recommended or Advanced High School Program which the student did not complete were unavailable to the student at the appropriate time in his or her high school career because of:

- (A) course scheduling;
- (B) lack of enrollment capacity; or

(C) another cause not within the person's control, an explanation for which is provided on the transcript by the official;

- (4) have graduated:

(A) in not more than 41 consecutive months, in which case the student must provide written approval of a parent or person standing in parental relation to the student; or

(B) in not more than 46 consecutive months, if the student graduated with at least 30 hours of college credit.

(5) A student's eligibility to receive a tuition credit under the Early High School Graduation Scholarship Program begins with the first regular semester or term following the student's graduation, exclusive of summer sessions that immediately follow the student's graduation. A student's eligibility to receive a tuition credit under the program ends six years after it begins, unless the student seeks and is granted an extension under §21.960 of this title (relating to Hardship Extensions).

#### §21.954. *The Application and Awarding Process.*

(a) (No change.)

(b) The application has three parts. It must be completed and signed by the high school counselor or principal on behalf of the student applicant.

(1) Parts I and III are to be completed for all applicants who graduated prior to September 1, 2003, and students who graduated between September 1, 2003 and September 1, 2005, in accordance with §21.953(b) of this title (relating to Eligible Students).

(2) (No change.)

(c) High school counselors or principals are to send the completed and signed applications to the Board for processing. If the application is for a student who qualifies for an award in accordance with §21.953(b) of this title, the application must be accompanied by a certified statement from the high school counselor, on high school letterhead, confirming the student was on track on August 31, 2003, to graduate under the provisions of the Early High School Graduation Scholarship Program as it existed at that time.

(d) - (g) (No change.)



*§21.956. Award Amounts and Processing Cycle.*

(a) Amounts for students graduating prior to September 1, 2003 or between September 1, 2003 and September 1, 2005, in accordance with conditions outlined in §21.953(b) of this title (relating to Eligible Students).

(1) - (3) (No change.)

(b) For students whose graduation date is after September 1, 2003, other than those graduating under the conditions outlined in §21.953(b) of this title:

(1) - (2) (No change.)

(c) (No change.)

*§21.959. Hardship Provisions.*

An otherwise eligible student who graduated from high school on or after September 1, 2003, other than those who graduated in accordance with the requirements outlined in §21.953(b) of this title (relating to Eligible Students), and who is unable to use his or her scholarship within the allotted six years may petition the Board for an extension. Such extensions, not to exceed one year, may be granted on the basis of hardships or other good causes, including but not limited to:

(1) - (2) (No change.)

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503172

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective Date: August 1, 2005

Expiration Date: November 28, 2005

For further information, please call: (512) 427-6114



## SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

### 19 TAC §21.1083

The Texas Higher Education Coordinating Board adopts, on an emergency basis, an amendment to §21.1083, concerning the Educational Aide Exemption Program.

The amendment to the section is adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The amendment is simultaneously being proposed for adoption in this issue of the *Texas Register*. Senate Bill 1227, 79th Legislature, Regular Session, amended Texas Education Code, §54.214 regarding the requirement of having been employed as an educational aide one of the past five years to students who are applying for their first exemptions. Prior to this amendment, an individual would have had to have been employed as an aide one of the past five years in order to qualify for an exemption. Therefore, students who entered the program on the third or fourth year after such employment would lose eligibility to continue in the program once that five-year deadline was reached. They would have to work for a year as an aide in order to re-establish eligibility for the exemption. Students, once

having met the employment requirement, may continue to pursue their teaching credentials.

The amendment is adopted, on an emergency basis, under the Texas Education Code, §54.214, which states that the Coordinating Board is authorized to adopt rules to implement this section.

The amendment affects the Texas Education Code, §54.214.

*§21.1083. Eligible Students.*

To receive an award through the Educational Aide Exemption Program, a student must:

(1) (No change.)

(2) have at least one school year of experience as an educational aide during the five years preceding the term or semester for which the student is awarded his or her initial [receives the] exemption;

(3) - (7) (No change.)

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503174

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective Date: August 1, 2005

Expiration Date: November 28, 2005

For further information, please call: (512) 427-6114



## TITLE 34. PUBLIC FINANCE

### PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

#### CHAPTER 25. MEMBERSHIP CREDIT SUBCHAPTER B. COMPENSATION

##### 34 TAC §25.30

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis new §25.30, concerning the conversion of amounts of noncreditable compensation to creditable compensation used as the basis for calculating a member's retirement benefits. The new section implements the requirement that TRS adopt rules excluding compensation in the member's final years of employment that represents amounts converted from noncreditable compensation to creditable compensation. The new section is adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows TRS to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The section is also adopted in accordance with §2001.006 of the Government Code, which allows TRS to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect. The new section is simultaneously being proposed for permanent adoption in this issue of the *Texas Register*.

The new section applies to the three years before retirement and establishes a base year of the fourth year or the fifth year if there

is no compensation in the fourth year. The characterization of the compensation in the base year is used to determine whether conversion occurred. The new section describes converted compensation. Payment for unused accrued leave or for accrued compensatory time for overtime worked is expressly excluded from creditable compensation. The new section relies on the certification of the reporting entity to notify TRS if conversion has occurred in the final years. It also clarifies that a member may provide supporting documentation if compensation is excluded but the member believes it should be creditable, but states that TRS makes the final decision regarding whether compensation is creditable. This approach ensures a more consistent application of the rule and encourages members who experience an increase in compensation due to the conversion of noncreditable compensation to remain employed longer to receive any correlating compensation increase in their retirement benefit calculation.

This emergency adoption is necessary because TRS and affected employers and members are required to comply with the relevant provisions of Senate Bill 1691, 79th Legislature, Regular Session, effective September 1, 2005. The new section is adopted on an emergency basis to enable TRS to establish new processes, forms, publications, and programming that are necessary and appropriate to implement the Act by its effective date of September 1, 2005. Further, the new section is adopted on an emergency basis to provide employers and members affected by it necessary, appropriate, and timely guidance in the form of a detailed rule to use in making informed budget, programming, and other decisions before the start of the next school year, which is imminent. TRS finds that these requirements of state law require the adoption of the new section on fewer than 30 days notice pursuant to §2001.034, Government Code. TRS has also determined that this section is necessary and appropriate in accordance with §2001.006, Government Code, which allows TRS to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect. The new section shall not be applied until the date the new law becomes effective, September 1, 2005.

The new section is adopted on an emergency basis under and implements §22 of Senate Bill 1691, 79th Legislature, Regular Session, which amends §825.110, Government Code, and requires the Board to adopt rules to exclude from annual compensation all or part of salary and wages in the final years of a member's employment that reasonably can be presumed to have been derived from a conversion of fringe benefits, maintenance, or other payments not includable in annual compensation to salary and wages. The new section is also adopted under §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

No other codes are directly affected by the new section.

§25.30. Conversion of Noncreditable Compensation to Salary.

(a) TRS excludes from creditable compensation any amount of otherwise eligible compensation that represents amounts converted into salary and wages from noncreditable compensation in the last three years prior to retirement.

(b) For purposes of this section, conversion occurs when an employer agrees to pay a member with creditable compensation for services performed in the future that in the past were paid with noncreditable compensation. Compensation in the form of accrued paid leave or accrued compensatory time for overtime worked cannot be converted to eligible compensation and are expressly excluded from creditable compensation at any time.

(c) The employer certifies whether compensation was converted in the last three years prior to retirement and the amount of the converted salary. In certifying whether conversion occurred in the last three years prior to retirement, the fourth year prior to retirement is the base year. If there is no credited amount of compensation in the fourth year, the fifth year prior to retirement is the base year. The characterization of the compensation in the base year as creditable or noncreditable is used in determining whether conversion occurred and the converted amounts are excluded as provided in subsection (a) of this section.

(d) If compensation is excluded under subsection (a) of this section, the member may provide additional information in the form of written documentation to demonstrate that the compensation should not be excluded. TRS makes the final determination regarding the characterization of compensation as creditable or noncreditable.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503047

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Effective Date: September 1, 2005

Expiration Date: December 29, 2005

For further information, please call: (512) 542-6438



**34 TAC §25.35**

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis new §25.35, concerning the administration of employer payments to the pension trust fund for new members. The proposed new section implements the requirement that employers shall pay the equivalent of the state contribution to the pension trust fund for new members in their first 90 days of employment. The new section is adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows TRS to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The new section is also adopted in accordance with §2001.006 of the Government Code, which allows TRS to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect. The new section is simultaneously being proposed for permanent adoption in this issue of the *Texas Register*.

In accordance with Senate Bill 1691, 79th Legislature, Regular Session, the new section implements the new employer payment requirement. It provides guidance to employers regarding the start and end of the 90-day payment period as well as guidance on how to coordinate the end of a person's membership waiting period with the new payment requirement.

This emergency adoption is necessary because TRS and affected employers are required to comply with the relevant provisions of Senate Bill 1691, 79th Legislature, Regular Session, effective September 1, 2005, including consideration of budgetary matters, preparation of communications for affected employers and new members, modification of procedures, and programming of payroll systems to implement the payment requirement.

TRS finds that these requirements of state law require the adoption of the new section on fewer than 30 days notice pursuant to §2001.034, Government Code. TRS has also determined that this section is necessary and appropriate in accordance with §2001.006, Government Code, which allows TRS to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect. The new section shall not be applied until the date the new law becomes effective, September 1, 2005.

The new section is adopted on an emergency basis under §825.102, Government Code, which authorizes the Board of Trustees of TRS to adopt rules for the administration of the funds of the retirement system. As described above, the sections are also adopted on an emergency basis under §2001.006 and §2001.034, Government Code. The new section implements §29 of Senate Bill 1691, 79th Legislature, Regular Session, which establishes new §825.4041, Government Code.

Other code provisions affected by the new section are §§821.001(7), 825.408, and 830.102, Government Code.

§25.35. Employer Payments for New Members.

(a) Effective September 1, 2005, the employer of a new member as defined by §825.4041, Government Code, shall pay the retirement system the required amount during the first 90 days of employment of the new member. When used in this section, "employer" has the meaning given it in §821.001(7), Government Code.

(b) A person hired before September 1, 2005, whose 90-day waiting period for membership in the retirement system did not end before September 1, 2005, is eligible to participate in the retirement system as a new member starting September 1, 2005.

(c) In determining the period of employment subject to employer payments, the following provisions apply:

(1) An employer shall count the date of employment of a new member as the first day of the 90-day payment period.

(2) An employer shall count calendar days of an employment period on or after September 1, 2005, towards the payment period, regardless of whether the days are in different school years.

(3) An employer shall count calendar days on or after September 1, 2005, during which an individual previously served as an employee with another TRS reporting entity towards the payment period.

(4) An employer shall not count any calendar days between periods of employment towards the payment period.

(5) Service provided by an employee on one calendar day to more than one employer that is a TRS reporting entity shall count as only one calendar day in the payment period. Each employer shall include such an employee's compensation in the aggregate compensation on which employer payment is required.

(6) A person who was hired before September 1, 2005, and who did not complete the 90-day waiting period before that date becomes eligible to participate in the retirement system starting September 1, 2005. The employer shall treat the member as a new member for the purpose of employer payments during the remainder of the 90-day period.

(d) For the purpose of administering this section, the date of employment means the date on which an employee begins to perform service for an employer that is a TRS reporting entity and the service is of a type that would otherwise qualify the employee for membership in the TRS pension plan, as provided under Subchapter A of this chapter

(relating to Service Eligible for Membership). If the date of employment is a holiday or another type of day on which the employer does not normally require actual service to be performed by an employee, the employer may nevertheless count the day as the date of employment if the employer considers the individual to be an employee on that day.

(e) During September 2005, an employer shall submit employer payments to TRS on compensation paid to an employee for the first full pay period starting on or after September 1, 2005. In subsequent months, an employer shall submit employer payments and member and other required contributions to TRS on compensation paid to an employee for the entire pay period that contains the first date of the employee's eligibility for membership. An employer also shall submit such payments to TRS on compensation paid to an employee for the entire pay period that contains the 90th day of employment. For the purpose of this section, a pay period is the normal, established period of employment for which the employer regularly pays compensation to the employee, regardless of the date on which the employer actually pays the compensation.

(f) An employer required by law to pay the state contribution from certain funds for its employees who are TRS members is not required to make additional payment to TRS under this section during the first 90 days of employment of a new member. A person employed by such an employer before September 1, 2005, shall be eligible for TRS membership in the manner described in subsection (b) of this section.

(g) An employer shall submit reports in a form required by TRS. Upon request by TRS, an employer or an employee shall provide copies of, or otherwise make available, any records that TRS determines are necessary to administer this section.

(h) An employer shall notify TRS immediately if it has failed to report an employee who was eligible for TRS membership and shall begin to report the employee as a member no later than the month immediately following the month in which the employer discovered the error. The employer shall correct any previous reports filed with TRS and make payments as required by this title.

(i) Because participation in the Optional Retirement Program ("ORP") under Chapter 830, Government Code, is in lieu of participation in TRS, a person employed on or after September 1, 2005, or whose 90-day waiting period expires on or after September 1, 2005, and who is otherwise eligible to elect to participate in ORP may elect to participate in ORP effective September 1, 2005. An election to participate in ORP must be made before the 91st day after becoming eligible to make the election, as required by §830.102, Government Code, but may not be made before the date on which an employee is eligible for TRS membership.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503044

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Effective Date: September 1, 2005

Expiration Date: December 29, 2005

For further information, please call: (512) 542-6438

◆ ◆ ◆  
CHAPTER 29. BENEFITS

## SUBCHAPTER A. RETIREMENT

### 34 TAC §29.4, §29.12

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis amendments to §29.4, concerning changes to the computation of compensation for the purpose of calculating a standard annuity at retirement and new §29.12, concerning repeal of the subsidized early age retirement benefit. The rule amendments and new section are adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows TRS to adopt emergency rules if a requirement of state or federal law requires adoption of the rules on less than 30 days notice. The amendments and new section are also adopted in accordance with §2001.006 of the Government Code, which allows TRS to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect. The rule amendments and new section are simultaneously being proposed for permanent adoption in this issue of the *Texas Register*.

The amendments to §29.4 will allow TRS to implement Senate Bill 1691, 79th Legislature, Regular Session, which changes the basis for computing compensation from a three-year to a five-year salary average for the purpose of calculating a standard annuity at retirement. The statutory amendment is effective September 1, 2005. Senate Bill 1691, however, also contains a grandfathering provision to preserve the current computation of compensation based on a three-year salary average for members who meet one or more of the grandfathering requirements on or before August 31, 2005. Adopted on an emergency basis and proposed for permanent adoption elsewhere in this issue of the *Texas Register*, new 34 TAC §51.12, concerning the applicability of certain laws in effect before September 1, 2005, sets out the details for applying the grandfathering requirements to amended §29.4. The emergency amendments to §29.4 set out the new five-year salary average for those who are not grandfathered and, to administer the grandfathering provision, preserve the current three-year salary average as part of the amended rule for reference by TRS staff and the membership when the repealed statute no longer will appear in official statutory texts.

New §29.12 will allow TRS to implement the section of Senate Bill 1691 that affects what is commonly referred to as the "subsidized early age retirement benefit," which has been available to members who are at least age 55 and have at least 20 years of service credit but do not meet the requirements for normal age retirement, such as rule of 80. Under Senate Bill 1691, the subsidized early age retirement benefit is repealed effective September 1, 2005. Senate Bill 1691, however, also contains a grandfathering provision to preserve current law on the subsidized early age retirement benefit for members who meet one or more of the grandfathering requirements on or before August 31, 2005. New 34 TAC §51.12, concerning the applicability of certain laws in effect before September 1, 2005, which is adopted on an emergency basis and proposed for permanent adoption elsewhere in this issue of the *Texas Register*, likewise sets out the details for applying the grandfathering requirements to new §29.12. To administer the grandfathering provision, new §29.12 preserves the subsidized early age retirement benefit requirements as part of the new section for reference by TRS staff and the membership when the repealed statute no longer will appear in official statutory texts.

These emergency adoptions are necessary because TRS and affected members are required to comply with the relevant provisions of Senate Bill 1691, 79th Legislature, Regular Session,

effective September 1, 2005, and because of the need to establish new processes, forms, publications, and programming to implement the statutory changes, as well as to provide necessary information to members making career and retirement plans in the next few months. TRS finds that these requirements of state law require the adoption of the amendments and new section on fewer than 30 days notice pursuant to §2001.034, Government Code. TRS has also determined that the amendments and new section are necessary and appropriate in accordance with §2001.006, Government Code, which allows TRS to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect. The amendments and new section shall not be applied until the date the new law becomes effective, September 1, 2005.

Amended §29.4 is adopted on an emergency basis under §825.102, Government Code, which authorizes the Board of Trustees of TRS to adopt rules for the administration of the funds of the retirement system. The amended section also is adopted under §2001.006 and §2001.034, Government Code.

Other code sections affected by amended §29.4 include §12 of Senate Bill 1691, 79th Legislature, Regular Session, which amends §824.203, Government Code, and §58 of Senate Bill 1691, which contains the grandfathering requirements related to the legislative amendment of §824.203, Government Code.

New §29.12 is adopted on an emergency basis under §825.102, Government Code, which authorizes the Board of Trustees of TRS to adopt rules for the administration of the funds of the retirement system. The new section also is adopted under §2001.006 and §2001.034, Government Code.

Other code sections affected by new §29.12 include §11 of Senate Bill 1691, 79th Legislature, Regular Session, which amends §824.202, Government Code, and §58 of Senate Bill 1691, which contains the grandfathering requirements related to the legislative amendment of §824.202, Government Code.

#### *§29.4. Actual Compensation.*

(a) Actual compensation paid to a member is used in computing the highest five [best three]-years' average compensation. The computation of [Best three-years'] average compensation for members with credit transferred from the Employees Retirement System of Texas ("ERS") may not include compensation for any month which was credited or should have been credited by the ERS if the member received compensation for service [during] the same month covered by Teacher Retirement System of Texas.

(b) A member eligible under §51.12 of this title (relating to Applicability of Certain Laws in Effect Before September 1, 2005) is eligible for computation of average compensation using a three-year salary average instead of a five-year salary average, as provided by §824.203(a), Government Code, prior to its amendment effective September 1, 2005, by Senate Bill 1691, 79th Legislature, Regular Session (2005).

#### *§29.12. Early Age Retirement Benefit Calculated on Law in Effect Before September 1, 2005.*

If a member eligible under §51.12 of this title (relating to Applicability of Certain Laws in Effect Before September 1, 2005) is at least 55 years old and has at least 20 years of service credit in the retirement system, the member is eligible to retire and receive a service retirement annuity reduced from the standard service retirement annuity available under §824.202(a)(2), Government Code, to a percentage derived from the following table, as provided by §824.202(c), Government Code, prior to its repeal effective September 1, 2005, by Senate Bill 1691, 79th Legislature, Regular Session (2005):

Figure: 34 TAC §29.12.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503050

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Effective Date: September 1, 2005

Expiration Date: December 29, 2005

For further information, please call: (512) 542-6438



## SUBCHAPTER F. PARTIAL LUMP-SUM PAYMENT

### 34 TAC §29.72

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis new §29.72, concerning eligibility to select a partial-lump sum option (PLSO). The rule is adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows TRS to adopt emergency rules if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The amendments and new rule are also adopted in accordance with §2001.006 of the Government Code, which allows TRS to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect. The rule is simultaneously being proposed for permanent adoption in this issue of the *Texas Register*.

New §29.72 will allow TRS to implement the section of Senate Bill 1691 that changes the eligibility requirement for a PLSO to require that the member meet the rule of 90 (age and service credit equal at least 90). Senate Bill 1691 also reduces the amount of a PLSO for early age retirement, as applicable. The statutory amendment is effective September 1, 2005. Senate Bill 1691, however, also contains a grandfathering provision to preserve the current PLSO eligibility requirements for members who meet one or more of the grandfathering requirements on or before August 31, 2005. New 34 TAC §51.12, concerning the applicability of certain laws in effect before September 1, 2005 and which is adopted on an emergency basis and proposed for permanent adoption elsewhere in this issue of the *Texas Register*, sets out the details for applying the grandfathering provision to new §29.72. To administer the grandfathering provision, new §29.72 preserves the current PLSO eligibility requirements as part of the rule for reference by TRS staff and the membership when the current text of the statute is replaced by the law as amended under Senate Bill 1691 in official statutory texts.

This emergency adoption is necessary because TRS and affected members are required to comply with the relevant provisions of Senate Bill 1691, 79th Legislature, Regular Session, effective September 1, 2005, and because of the need to establish new processes, forms, publications, and programming to implement the statutory changes, as well as to provide necessary information to members making career and retirement plans in the next few months. TRS finds that these requirements of state law require the adoption of the new section on fewer than 30 days notice pursuant to §2001.034, Government Code. TRS has also

determined that the new section is necessary and appropriate in accordance with §2001.006, Government Code, which allows TRS to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect. The new rule will not be applied until the date the new law becomes effective, September 1, 2005.

The new section is adopted on an emergency basis under §825.102, Government Code, which authorizes the Board of Trustees of TRS to adopt rules for the administration of the funds of the retirement system. The rule is also adopted under §824.2045, Government Code, which authorizes the Board to adopt rules for the implementation of §824.2045, relating to the partial lump-sum option. The new rule is also adopted under §2001.006 and §2001.034, Government Code.

Other codes affected by the new section include §13 of Senate Bill 1691, 79th Legislature, Regular Session, which amends §824.2045, Government Code, and §58 of Senate Bill 1691, which contains the grandfathering requirements related to the legislative amendment of §824.2045, Government Code.

#### §29.72. Eligibility to Select PLSO.

(a) Except as provided in subsection (b) of this section, effective September 1, 2005, a member is eligible to select a partial lump-sum distribution only if the member's age and years of service credit total at least 90 at the time of retirement and the member meets the other requirements of §824.2045, Government Code, as amended by Senate Bill 1691, 79th Legislature, Regular Session (2005).

(b) A member eligible under §51.12 of this title (relating to Applicability of Certain Laws in Effect Before September 1, 2005) is eligible to select a partial lump-sum distribution as provided by §824.2045, Government Code, prior to its amendment effective September 1, 2005, by Senate Bill 1691, 79th Legislature, Regular Session (2005). Under §824.2045 prior to amendment, to be eligible to select a partial lump-sum distribution, a member must be eligible for an unreduced service retirement annuity under §824.202(a), Government Code, as it existed prior to amendment effective September 1, 2005, and must not be participating in the deferred retirement option plan under Subchapter E of this chapter.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503052

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Effective Date: September 1, 2005

Expiration Date: December 29, 2005

For further information, please call: (512) 542-6438



## CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

### SUBCHAPTER D. EMPLOYER PENSION SURCHARGE

#### 34 TAC §31.41

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis new §31.41, concerning the administration of

an employer pension surcharge related to employment after retirement. The proposed new section implements the requirement that employers shall make monthly payments to the pension trust fund for each TRS-retired employee reported to TRS on the return to work report of retirees, unless exempted by law. The new section is adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows TRS to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The section is also adopted in accordance with §2001.006 of the Government Code, which allows TRS to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect. The new section is simultaneously being proposed for permanent adoption in this issue of the *Texas Register*.

In accordance with Senate Bill 1691, 79th Legislature, Regular Session, the new section implements the new employer pension surcharge. It provides guidance to employers regarding the reported retirees for whom the surcharge is owed under Senate Bill 1691 and set out procedures related to payments. In accordance with the legislative enactment, the TRS Board of Trustees separately adopted by resolution the pension surcharge amount, which is an amount equal to the sum of the combined member and state contributions (currently 12.4% of salary).

This emergency adoption is necessary because TRS and affected employers are required to comply with the relevant provisions of Senate Bill 1691, 79th Legislature, Regular Session, effective September 1, 2005, including consideration of budgetary matters, preparation of communications for affected employers and reported retirees, modification of procedures, and programming of payroll systems to implement the payment requirement. TRS finds that these requirements of state law require the adoption of the new section on fewer than 30 days notice pursuant to §2001.034, Government Code. TRS has also determined that this section is necessary and appropriate in accordance with §2001.006, Government Code, which allows TRS to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect. The new section shall not be applied until the date the new law becomes effective, September 1, 2005.

The new section is adopted on an emergency basis under §825.102, Government Code, which authorizes the Board of Trustees of TRS to adopt rules for the administration of the funds of the retirement system. As described above, the sections are also adopted under §2001.006 and §2001.034, Government Code. The new section implements §30 of Senate Bill 1691, 79th Legislature, Regular Session, which establishes new §825.4092, Government Code.

Other code provisions affected by the new rule are §§824.602, 824.6022, and 825.408, Government Code.

§31.41. Return to Work Employer Pension Surcharge.

(a) For each report month a retiree is reported on the Employment of Retired Member Report, the employer that reports the retiree shall pay to the Teacher Retirement System of Texas (TRS) a surcharge based on each retiree's salary. For purposes of this section the employer is the reporting entity that reports the employment of the retiree.

(b) The surcharge amount that must be paid by the employer for each retiree reported is an amount that is derived by applying a percentage to the retiree's salary. The percentage applied to the retiree's salary is an amount set by the Board of Trustees and is based on the member contribution rate and the state pension contribution rate.

(c) The surcharge is due from each employer that reports a retiree as working on or after September 1, 2005, beginning with the report month for September 2005.

(d) The surcharge is not owed by the employer for any retiree reported by that employer for the report month of January 2005.

(e) The surcharge is not owed by the employer for a retiree that is reported by a second employer for the report month of January 2005 if both employers are school districts that consolidate into a consolidated school district on or before September 1, 2005.

(f) The surcharge is not owed by the employer for a retiree that is reported as working under the exception for Substitute Service as provided in §31.13 of this title unless that retiree combines Substitute Service under §31.13 with One-half Time Employment under §31.14 of this title in the same calendar month. For each calendar month that the retiree combines employment under these two sections, the surcharge is owed by the employer that reports the retiree.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503058

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Effective Date: September 1, 2005

Expiration Date: December 29, 2005

For further information, please call: (512) 542-6438

◆ ◆ ◆  
**CHAPTER 41. HEALTH CARE AND  
INSURANCE PROGRAMS  
SUBCHAPTER A. RETIREE HEALTH CARE  
BENEFITS (TRS-CARE)**

**34 TAC §41.4**

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis new §41.4, concerning the administration of an employer health benefit surcharge related to employment after retirement. The new section implements the requirement that employers shall make monthly payments to the fund for the health benefits program ("TRS-Care") provided pursuant to the Texas Public School Retired Employees Group Benefits Act for each TRS-retired employee who is both (i) reported to TRS on the return to work report of retirees, taking into consideration any exceptions allowed by law, and (ii) enrolled in the TRS-Care health benefits program. The new section is adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows TRS to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The section is also adopted in accordance with §2001.006 of the Government Code, which allows TRS to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect. The new section is simultaneously being proposed for permanent adoption in this issue of the *Texas Register*.

In accordance with Senate Bill 1691, 79th Legislature, Regular Session, the new section implements the new employer health

benefit surcharge. It provides guidance to employers regarding the reported retirees for whom the surcharge is owed and procedures related to payments. The TRS Board of Trustees separately adopted by resolution a table setting forth the monthly dollar amounts for the surcharge, as shown in the graphic titled "TRS-Care Employer Surcharge Amounts--Return to Work Effective September 1, 2005" and attached to the rule as proposed for permanent adoption elsewhere in this issue of the *Texas Register*.

This emergency adoption is necessary because TRS and affected employers are required to comply with the relevant provisions of Senate Bill 1691, 79th Legislature, Regular Session, effective September 1, 2005, including consideration of budgetary matters, preparation of communications for affected employers and reported retirees, modification of procedures, and programming of payroll systems to implement the payment requirement. TRS finds that these requirements of state law require the adoption of the new section on fewer than 30 days notice pursuant to §2001.034, Government Code. TRS has also determined that this section is necessary and appropriate in accordance with §2001.006, Government Code, which allows TRS to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect. The new section shall not be applied until the date the new law becomes effective, September 1, 2005.

The new section is adopted on an emergency basis under §1575.052, Insurance Code, which authorizes the TRS Board of Trustees ("Board") to adopt rules it considers necessary to implement and administer the retirees' group health benefit plan and associated fund. As described above, the sections are also adopted under §2001.006 and §2001.034, Government Code. The new section implements §30 and §42 of Senate Bill 1691, 79th Legislature, Regular Session, which respectively establish new §825.4092, Government Code, and amend §1575.204, Insurance Code.

Other code provisions affected by the new rule are §§821.001(7), 824.602, 824.6022, and 825.408, Government Code, and Chapter 1575, Insurance Code.

#### §41.4. Employer Health Benefit Surcharge.

(a) When used in this section, the term "employer" has the meaning given in §821.001(7), Government Code.

(b) A retiree who is enrolled in the health benefits program ("TRS-Care") provided pursuant to the Texas Public School Retired Employees Group Benefits Act and is reported on the Employment of Retired Member Report to the Teacher Retirement System of Texas ("TRS") shall submit the Employer Health Benefit Surcharge form, promulgated by TRS, to the employer, providing details of the retiree's TRS-Care coverage, the cost of the coverage for the retiree and all other individuals enrolled under the same account identification number, the premium paid for such coverage, and other employment of a retiree or any other individual enrolled under the same account identification number, as required by the form. It is the employer's and the retiree's responsibilities to update the Employer Health Benefit Surcharge form, as necessary (e.g., when changes in coverage or the employment status of any retiree or other individual enrolled under the same account identification number occurs).

(c) For each report month a retiree is enrolled in TRS-Care and is reported on the Employment of Retired Member Report, the employer that reports the retiree shall, using the information provided by the retiree to the employer on the Employer Health Benefit Surcharge form, pay to the Retired School Employees Group Insurance Fund (the

"Fund") a surcharge amount that is derived by taking the difference, if any, between:

(1) the monthly full cost, as set by the trustee, for all individuals (including a spouse and children, if any) enrolled under the same account identification number, and

(2) the monthly total premium, as set by the trustee, for all individuals (including a spouse and children, if any) enrolled under the same account identification number.

(d) The surcharge under subsection (c) of this section is due from each employer that reports a retiree as working on or after September 1, 2005, beginning with the report month for September 2005.

(e) The surcharge under subsection (c) of this section is not owed:

(1) by an employer for any retiree reported by that employer for the report month of January 2005;

(2) by an employer for any retiree reported by a second employer for the report month of January 2005, if both employers are school districts that consolidate into a consolidated school district on or before September 1, 2005; or

(3) by an employer for a retiree reported as working under the exception for Substitute Service as provided in §31.13 of this title (relating to Substitute Service) unless that retiree combines Substitute Service under §31.13 of this title with One-half Time Employment under §31.14 of this title (relating to One-half Time Employment) in the same calendar month. For each calendar month that the retiree combines employment under these two sections of this title, the employer that reports the retiree owes the surcharge.

(f) An employer who reports to TRS the employment of a retiree who is enrolled in TRS-Care shall inform TRS as soon as possible in writing of the name, address, and telephone number of any other employer that employs the retiree or any other retiree who is also enrolled under the same account identification number.

(g) If more than one employer reports the employment of a retiree to TRS during any part of a month, the surcharge under subsection (c) of this section required to be paid into the Fund by each reporting employer for that month is the total amount of the surcharge due that month divided by the number of reporting employers. The pro rata share owed by each employer is not based on the number of hours respectively worked each week by the retiree for each employer, nor is it based on the number of days respectively worked during the month by the retiree for each employer.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503045

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Effective Date: September 1, 2005

Expiration Date: December 29, 2005

For further information, please call: (512) 542-6438

◆ ◆ ◆  
CHAPTER 51. GENERAL ADMINISTRATION  
34 TAC §51.12

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis new §51.12 concerning the applicability of certain benefits laws in effect before September 1, 2005. The new section implements a grandfathering provision in Senate Bill 1691, 79th Legislature, Regular Session, to preserve current law on three benefit provisions for members who timely meet one or more of the grandfathering requirements. The new section is adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows TRS to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The section is also adopted in accordance with §2001.006 of the Government Code, which allows TRS to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect. The new section is simultaneously being proposed for permanent adoption in this issue of the *Texas Register*.

Senate Bill 1691, 79th Legislature, Regular Session, makes changes to the following benefit provisions: amends §824.202, Government Code, to eliminate what is commonly referred to as "subsidized early age retirement"; amends §824.203, Government Code, to change the three-year salary average to a five-year average for determining the standard annuity amount at retirement; and §824.2045, Government Code, to change eligibility requirements for the Partial Lump Sum Option (PLSO) to require a retiree to meet a rule of 90. These statutory changes are effective September 1, 2005. However, Senate Bill 1691 also contains a grandfathering provision to preserve current law on these three benefit provisions for members who timely meet one or more of the grandfathering requirements. In accordance with the legislative enactment, the new rule implements and sets out the grandfathering provision, which requires that, on or before August 31, 2005, the member must attain the age of 50, meet the "rule of 70" (the sum of age plus years of service credit must equal 70 or greater), or have at least 25 years of service credit. The new rule also provides guidance on the effect of termination of membership after meeting one or more grandfathering requirements and on using service credit in another Texas public retirement system for purposes of applying either the rule of 70 or the provision requiring 25 years of service credit.

This emergency adoption is necessary because TRS and affected members are required to comply with the relevant provisions of Senate Bill 1691, 79th Legislature, Regular Session, effective September 1, 2005, and because of the need to establish new processes, forms, publications, and programming to implement the statutory changes, as well as to provide necessary information to members making career and retirement plans in the next few months. TRS finds that these requirements of state law require the adoption of the new section on fewer than 30 days notice pursuant to §2001.034, Government Code. TRS has also determined that this section is necessary and appropriate in accordance with §2001.006, Government Code, which allows TRS to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect. The new section shall not be applied until the date the new law becomes effective, September 1, 2005.

The new section is adopted on an emergency basis under §825.102, Government Code, which authorizes the Board of Trustees of TRS to adopt rules for the administration of the funds

of the retirement system. The new rule is also adopted under §824.2045, Government Code, which authorizes the Board to adopt rules for the implementation of §824.2045, relating to the partial lump-sum option. The new section is also adopted under §§2001.006 and 2001.034, Government Code.

Other codes affected by the new section include §§11, 12, 13, and 58 of Senate Bill 1691, 79th Legislature, Regular Session, which, respectively, amend §§824.202, 824.203, and 824.2045, Government Code.

§51.12. Applicability of Certain Laws in Effect Before September 1, 2005.

(a) A person who retires under the Teacher Retirement System of Texas on or after September 1, 2005, and who meets one or more of the following requirements on or before August 31, 2005, is governed by provisions of state law relating to early retirement with at least twenty years of service credit under §824.202(c), Government Code, three year salary average under §824.203, Government Code, and the partial lump sum option (PLSO) under §824.2045, Government Code, as those provisions existed prior to September 1, 2005:

- (1) the person has attained age 50;
- (2) the sum of the person's age and amount of service credit in the retirement system equals 70 or greater; or
- (3) the person has at least 25 years of service credit in the retirement system.

(b) A member who meets at least one of the requirements of subsection (a) of this section by August 31, 2005, before termination of membership through withdrawal of member contributions or absence from service shall be considered as continuing to be eligible under subsection (a) of this section upon resumption of membership.

(c) Service that is credited with another Texas public retirement system and that meets all requirements to be used for retirement eligibility under the proportionate retirement program or the ERS/TRS transfer program may be considered to determine eligibility of a TRS member under paragraphs (2) and (3) of subsection (a) of this section.

(d) Purchased or reinstated service credit in the retirement system may be considered to determine eligibility of a TRS member under paragraphs (2) and (3) of subsection (a) of this section if credited in accordance with uniform administrative requirements, including payment deadlines, established by the retirement system in order to complete processing for members who request purchase of service credit before August 31, 2005.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503057

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Effective Date: September 1, 2005

Expiration Date: December 29, 2005

For further information, please call: (512) 542-6438

◆ ◆ ◆



# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 4. OFFICE OF THE SECRETARY OF STATE

#### CHAPTER 71. GENERAL POLICIES AND PROCEDURES

##### SUBCHAPTER A. PRACTICE AND PROCEDURE

###### 1 TAC §71.8, §71.14

The Office of the Secretary of State (the Secretary of State) proposes to amend §71.8, concerning fees for copies of public information, and §71.14, concerning credit card payment.

The amendment to §71.8 will change the reference to a rule of Texas Building and Procurement Commission to that of the Office of Attorney General. This is necessary because Senate Bill 452, 79th Legislature, regular session, transfers the duties of the Texas Building and Procurement Commission under the public information law to the Attorney General.

The amendment to §71.14 will increase the existing credit card convenience fee from 2.1% to 2.7% in order to continue recovering the expense of providing the credit card payment option.

Jim Beck, Director of Administrative Services, has determined that for each year of the first five years that the amendments are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Beck also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing or administering the amendments as proposed will be to continue the convenience of accepting credit cards for payment of agency services, and updating references to the rule for fees for copies.

The effect on small or micro businesses will be an increase of .6% for applicable credit card purchases. The anticipated economic cost to persons who are required to comply with the proposed rule will be an increase of .6% for applicable credit card purchases.

Comments on the proposed rules may be submitted in writing to: Dan Procter, Texas Register Section, Office of the Secretary of State, P.O. Box 13824, Austin, Texas 78711-3825. Comments must be received not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears.

Statutory Authority: Chapter 404 of the Government Code.

These amendments implement Government Code, Chapters 404, 552, and 2001.

###### §71.8. Fees for Copies of Public Information ~~[Open Records]~~.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Actual Cost--The sum of all direct costs plus a proportional share of overhead, or indirect costs. Actual cost should be determined in accordance with generally accepted methodologies.

(2) Nonstandard copy--A copy of public information that is made available to a requestor in any format other than a standard paper copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM, and nonstandard paper copies are examples of nonstandard copies.

(3) Readily available information--Information that already exists in printed form, or information that is stored electronically and is ready to be printed or copied without requiring any programming, or information that already exists on microfiche or microfilm. Information that requires a substantial amount of time to locate or prepare for release is not readily available information.

(4) Standard copy--A printed impression on one side of a piece of paper that measures up to 8 1/2 by 14 inches. Each side of a piece of paper on which an impression is made is counted as a single copy. A piece of paper that is printed on both sides is counted as two copies.

(b) Certified copies of documents on file in the Office of the Secretary of State are available. Statute and not these rules establish fees for certificates and certified copies.

(c) The following is a summary of the charges for copies of public information on file in the Office of the Secretary of State. The charges conform to rules of the Office of the Attorney General [Texas Building and Procurement Commission in Chapter 111, Subchapter C of this title (relating to Cost of Copies of Public Information)]. This section does not apply to charges for publications or information as authorized by statutes other than Chapter 552 of the Government Code.

(1) Standard paper copy (50 pages or fewer)--\$.10 per page.

(2) Nonstandard-size copy:

- (A) Diskette--\$1.00 each;
- (B) Compact disk (CD-RW or CD-R)--\$1.00;
- (C) Digital video disk (DVD)--\$3.00;
- (D) VHS video cassette--\$2.50 each;
- (E) audio cassette--\$1.00 each;
- (F) Oversize paper copy--\$.50;
- (G) Other--Actual cost.

(3) Personnel charge:

- (A) Programming personnel--\$28.50 per hour;
- (B) Other personnel--\$15 per hour.
- (4) Overhead charge--20% of personnel charge.
- (5) Microfiche or microfilm charge:
  - (A) Paper copy (50 pages or fewer)--\$.10;
  - (B) Fiche or film copy--Actual cost.
- (6) Remote document retrieval charge--Actual cost.
- (7) Computer resource charge:
  - (A) Midsize--\$1.50 per CPU minute;
  - (B) Client/Server--\$2.20 per clock hour;
  - (C) PC or LAN--\$1.00 per clock hour.
- (8) Miscellaneous supplies--Actual cost.
- (9) Postage and shipping charge--Actual cost.
- (10) Other costs--Actual cost.

(d) In response to a request for public information that is not readily available or for information in excess of 50 pages of readily available information, the secretary of state will charge an amount that reasonably includes all costs related to reproducing the record, including cost of materials, labor, and overhead.

(e) In response to a request to deliver requested copies of public information by facsimile transmission or other electronic means, the secretary of state will charge an amount that reasonably includes the actual cost to transmit the requested copies as determined in accordance with generally accepted cost methodologies.

#### *§71.14. Credit Card Payment Option.*

(a) Fees payable to the Office of the Secretary of State may be paid with a valid and current VISA, Discover, or MasterCard or such other credit card specified in the contract then existing between the Office of the Secretary of State, the Comptroller of Public Accounts [Texas State Treasury Department], and the relevant financial institution.

(b) Unless provided otherwise, fees payable to the Office of the Secretary of State may also be paid through an automated clearinghouse (ACH) debit system account established by an agreement executed between the debit system account applicant and the financial institution under contract to the Office of the Secretary of State and the Comptroller of Public Accounts [Texas State Treasury Department].

(c) As authorized by §405.031 of the Government Code, the Office of the Secretary of State requires users of the credit card payment option via the Internet or telephone to pay the relevant statutory fee or fees plus a convenience fee. The amount to be collected "per credit card transaction" processed via the Internet or by telephone in connection with this payment option is currently set at 2.7% [2.4%] of the total fees incurred. For purposes of this rule, "per credit card transaction" processed via the Internet or by telephone shall be defined as simultaneous payment of one or more fees using a VISA, Discover, or MasterCard or other valid and current credit/debit card designated by the contract(s) then existing between the Office of the Secretary of State, the Comptroller of Public Accounts [Texas State Treasury Department], and the relevant financial institution. The Office of the Secretary of State shall deposit all fees, including all convenience fees collected under this payment option, in the Texas State treasury.

(d) To utilize this payment option for documents filed with the secretary of state in person or by mail, the document sender must either submit a completed credit card payment form available from the secretary of state or provide the following information in written form:

- (1) the name of the credit card being used (VISA, Discover, or MasterCard or such other card as may be referred to in the contract between the Office of the Secretary of State, the Comptroller of Public Accounts [Texas State Treasury Department], and the relevant financial institution);
- (2) the account number of the credit card;
- (3) the expiration date of the credit card;
- (4) the signature of the card holder;
- (5) the sum of all fees to be charged; and

(e) If a credit card payment is dishonored when presented by the state for payment, the secretary of state shall treat the document submitted for filing in the same manner as if no filing fee had been presented. The secretary of state will then be entitled to take all appropriate action authorized by law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 29, 2005.

TRD-200503101

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 463-5562

## SUBCHAPTER E. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT DISPUTES

### **1 TAC §71.83**

The Office of the Secretary of State (the Secretary of State) proposes to amend §71.83, concerning Definitions.

The amendment will implement House Bill 297, 79th Legislature, Regular Session, which changes the title of assistant secretary of state to deputy secretary of state.

Jim Beck, Director of Administrative Services, has determined that for each year of the first five years that the amendment is in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Beck also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing or administering the amendment as proposed will be the implementation of HB 297.

There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed rules may be submitted in writing to: Dan Procter, Texas Register Section, Office of the Secretary of State, P.O. Box 13824, Austin, Texas 78711-3825. Comments

must be received not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears.

Statutory Authority: Chapter 404 of the Government Code, as amended by House Bill 297, 79th Legislature Regular Session.

This rule implements Section 405.004, Government Code; Section 221.023(c), Health and Safety Code; Section 303.034(c), Local Government Code; Section 171.355(b), Tax Code; Section B, Article 2.07, Texas Non-Profit Corporation Act (Article 1396-2.07, Vernon's Texas Civil Statutes); Section B, Article 8.09, Texas Non-Profit Corporation Act (Article 1396-8.09, Vernon's Texas Civil Statutes); Section B, Article 2.08, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes); Section B, Article 2.11, Texas Business Corporation Act; Section B, Article 8.10, Texas Business Corporation Act; Section 10(b), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes); Sections 1.08(b) and 9.10(b), Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes); Section 10.05(l), Texas Revised Partnership Act (Article 6132b-10.05, Vernon's Texas Civil Statutes); Section 5.20(B), Texas Real Estate Investment Trust Act (Article 6138A, Vernon's Texas Civil Statutes); Article 17A.04(b), Code of Criminal Procedure.

*§71.83. Definitions.*

The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

(1) Chief administrative officer--The Secretary of State, Deputy Secretary of State [Assistant Secretary of State] or other executive officer responsible for the day to day operations of a unit of state government.

(2) Contractor--Independent contractor who has entered into a contract directly with a unit of state government. The term does not include:

(A) A contractor's subcontractor, officer, employee, agent, or other person furnishing goods or services to a contractor;

(B) An employee of a unit of state government; or

(C) A student at an institution of higher education.

(3) Day--A calendar day. If an act is required to occur on a day falling on a Saturday, Sunday, or holiday, the first working day which is not one of these days should be counted as the required day for purpose of this act.

(4) Parties--The contractor and unit of state government that have entered into a contract in connection with which a claim of breach of contract has been filed under this chapter.

(5) Unit of state government or unit--The state or an agency, department, commission, bureau, board, office, council, court, or other entity that is in any branch of state government and that is created by the constitution or a statute of this state, including a university system or institution of higher education. The term does not include a county, municipality, court of a county or municipality, special purpose district, or other political subdivision of this state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 29, 2005.

TRD-200503102

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 463-5562

◆ ◆ ◆  
**CHAPTER 81. ELECTIONS**

**SUBCHAPTER A. VOTER REGISTRATION**

**1 TAC §81.18**

The Office of the Secretary of State (the Secretary of State) proposes to amend §81.18, concerning Approval Requirements for the Secretary of State.

The amendment will implement House Bill 297, 79th Legislature, Regular Session, which changes the title of assistant secretary of state to deputy secretary of state. The amendment also reflects a change in the title of the elections director.

Ann McGeehan, Director of Elections, has determined that for each year of the first five years that the amendment is in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule.

Ms. McGeehan also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing or administering the amendment as proposed will be the implementation of HB 297.

There will be no effect on small or micro businesses.

Comments on the proposed rules may be submitted in writing to: Dan Procter, Texas Register Section, Office of the Secretary of State, P.O. Box 13824, Austin, Texas 78711-3825. Comments must be received not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears.

Statutory Authority: Chapter 404 of the Government Code, as amended by House Bill 297, 79th Legislature Regular Session.

This rule implements Section 405.004, Government Code; Section 221.023(c), Health and Safety Code; Section 303.034(c), Local Government Code; Section 171.355(b), Tax Code; Section B, Article 2.07, Texas Non-Profit Corporation Act (Article 1396-2.07, Vernon's Texas Civil Statutes); Section B, Article 8.09, Texas Non-Profit Corporation Act (Article 1396-8.09, Vernon's Texas Civil Statutes); Section B, Article 2.08, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes); Section B, Article 2.11, Texas Business Corporation Act; Section B, Article 8.10, Texas Business Corporation Act; Section 10(b), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes); Sections 1.08(b) and 9.10(b), Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes); Section 10.05(l), Texas Revised Partnership Act (Article 6132b-10.05, Vernon's Texas Civil Statutes); Section 5.20(B), Texas Real Estate Investment Trust Act (Article 6138A, Vernon's Texas Civil Statutes); Article 17A.04(b), Code of Criminal Procedure.

*§81.18. Approval Requirements for the Secretary of State.*

A Chapter 19 Purchase Voucher Form shall not be processed for payment without the written approval of the Director of Elections [Deputy Assistant Secretary of State for Elections]. Chapter 19 Purchase Voucher Forms in excess of \$1,000 shall not be processed for payment without the written approval of the Deputy Secretary of State [Assistant Secretary of State]. Chapter 19 Purchase Voucher Forms

in excess of \$10,000 shall not be processed for payment without the written approval of the Secretary of State.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 29, 2005.

TRD-200503103

Ann McGeehan

Director of Elections

Office of the Secretary of State

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 463-5562



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER A. COST DETERMINATION PROCESS

#### 1 TAC §355.103

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.103, concerning Allowable and Unallowable Costs in its Reimbursement Rates chapter. The amendment will clarify that, for any individual eligible for Medicare Part D, the cost of any drug that is in a category that is covered by Medicare Part D is unallowable for Medicaid cost reporting purposes.

#### Background and Justification

Title I of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 establishes a new voluntary outpatient prescription drug benefit under Part D of Title XVIII of the Social Security Act. All Medicare beneficiaries are eligible for this coverage. The standard benefit of this coverage requires beneficiaries to pay a monthly premium and a portion of the cost of the prescription, known as cost sharing. Assistance with premiums and cost sharing is provided to eligible low-income beneficiaries.

Beneficiaries who currently receive coverage under both Medicare and Medicaid will no longer receive drug benefits under Medicaid after the end of the year. Beginning January 1, 2006, these individuals, known as "dual eligibles" will receive prescription drugs as part of enrollment in Medicare Part D. Their initial enrollment in the program is handled by the Centers for Medicare and Medicaid Services (CMS).

This amendment is being proposed to comply with federal regulations at 42 CFR §423.906 General Payment Provisions, which state that Medical assistance (i.e., Medicaid) is not available to full-benefit dual eligible individuals, including those not enrolled in a Part D plan, for covered Part D drugs or any cost sharing obligations relating to covered Part D drugs effective January 1, 2006.

#### Section-by-Section Summary

The rule is being amended to add subsection (b)(19), making unallowable the cost of any drug that is in a category covered by Medicare Part D, for any individual eligible for Medicare Part D.

#### Fiscal Note

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed amendment will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

#### Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the amendment as they will not be required to alter their business practices as a result of the amended rule. There are no anticipated economic costs to persons who are required to comply with the proposed amendment. There is no anticipated negative impact on local employment.

#### Public Benefit

Ed White, Director of Forecasting and Rate Analysis, has determined that, during the first five years the proposed amendment is in effect, the public benefits anticipated as a result of enforcing the amended section are that the state will be in compliance with federal regulations that prohibit claiming federal Medicaid matching funds for full-benefit dual eligible individuals for costs of covered Part D drugs or any cost sharing obligations relating to covered Part D drugs. This amendment ensures that these costs will not be claimed on Medicaid cost reports and included in Medicaid payment rates.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposal may be submitted to Lesa Ledbetter, at Health and Human Services, P.O. Box 85200, Austin, Texas 78708-5200, by fax to (512) 491-1953, or by e-mail to [lesa.ledbetter@hhsc.state.tx.us](mailto:lesa.ledbetter@hhsc.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*. For further information regarding the proposal or to make the proposal available for public review, contact local offices of DADS or Pam McDonald at (512) 491-1373 in HHSC Rate Analysis.

#### Public Hearing

A public hearing is scheduled for August 17, 2005 from 1:00 p.m. to 2:00 p.m. (central time) in the HHSC Lone Star Conference Room at 11209 Metric Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Carmen Capetillo at (512) 491-1104.

## Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b) which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendment affects the Texas Government Code, §531.033 and §531.021(b). No other statutes, articles, or codes are affected by this proposal.

### §355.103. *Specifications for Allowable and Unallowable Costs.*

- (a) (No change.)
- (b) Allowable and unallowable costs.
  - (1) - (18) (No change.)

(19) For any individual eligible for Medicare Part D, the cost of any drug that is in a category that is covered by Medicare Part D is unallowable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 28, 2005.

TRD-200503098

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 424-6900



## CHAPTER 361. CHILDREN'S HEALTH INSURANCE PROGRAM

### 1 TAC §361.1

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Health and Human Services Commission (HHSC or Commission) proposes to repeal Chapter 361, Children's Health Insurance Program, §361.1, concerning the definition of Significant Traditional Provider. The term is now found in new Subchapter D, Provider Requirements, in Chapter 370, State Children's Health Insurance Program, that is proposed elsewhere in this issue of the *Texas Register*.

#### Background and Justification

This chapter is repealed in order to consolidate all CHIP rules in a single chapter of the Texas Administrative Code.

#### Fiscal Note

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five-year period the proposed

rule is in effect there should not be a fiscal impact to state government. The proposed rule should not result in any fiscal implications for local health and human services agencies. Local governments should not incur additional costs.

#### Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no anticipated effect on small businesses or micro businesses to comply with the repeal as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

#### Public Benefit

Billy Millwee, Deputy Director for Health Plans, has determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of the section. The anticipated public benefit, as a result of enforcing the section, will be the consolidation of all CHIP rules in a single chapter of the Texas Administrative Code.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposal may be submitted to Lesa Ledbetter, at Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200, by fax to (512) 491-1953, or by e-mail to [lesa.ledbetter@hhsc.state.tx.us](mailto:lesa.ledbetter@hhsc.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

#### Public Hearing

A public hearing is scheduled for August 16, 2005 from 1:00 p.m. to 2:00 p.m. (central time) in the Public Hearing Room of the Winters Complex at 701 W. 51st St, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Carmen Capetillo at (512) 491-1104.

#### Statutory Authority (CHIP)

The repeal is proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed repeal affects the Texas Health and Safety Code, Chapter 62, and the Texas Government Code, Chapter 531. No

other statutes, articles, or codes are affected by the proposed repeal.

*§361.1. Definition of Significant Traditional Provider.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503115

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 424-6900



## CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

### SUBCHAPTER D. PROVIDER REQUIREMENTS

#### 1 TAC §§370.401, 370.403, 370.405, 370.407

The Texas Health and Human Services Commission (HHSC or Commission) proposes new Subchapter D, Provider Requirements, in Chapter 370, State Children's Health Insurance Program, §§370.401, 370.403, 370.405 and 370.407. This subchapter defines Significant Traditional Provider for CHIP. This term was previously defined in Chapter 361, Children's Health Insurance Program, that is being repealed elsewhere in this issue of the *Texas Register*. HHSC also proposes new rules in this subchapter to prohibit balance billing and to outline the process and timeframes for claim appeals in the CHIP program.

#### Background and Justification

The definition of Significant Traditional Provider for CHIP is revised from its previous definition to conform to the term as it is defined in Medicaid Managed Care. Balance billing has not previously been addressed in the CHIP program rules. The new rule formalizes what has previously been found only in contract language. Provider claim appeal timeframes have also not previously been addressed in rule. The addition of this rule provides a consistent and formal description of this process. Definitions are added to support the new rules.

Section-by-Section Summary Definitions of terms used in this subchapter are added in new §370.401. The rule in §370.403 aligns the definition of Significant Traditional Provider with the definition of this term in Medicaid Managed Care. New §370.405 prohibits a CHIP provider from billing the member or guardian for any balance remaining after payment is made by CHIP for the service or for any billing error made by the provider. New §370.407 describes the claims appeal and complaint process, as well as associated timeframes that are available to providers.

#### Fiscal Note

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five-year period the proposed rules are in effect there should not be a fiscal impact to state government. The proposed rules should not result in any fiscal implications for local health and human services agencies. Local governments should not incur additional costs.

#### Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no anticipated effect on small businesses or micro businesses to comply with the rules as they will not be required to alter their business practices as a result of the rules. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

#### Public Benefit

Billy Millwee, Deputy Director for Health Plans, has determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The anticipated public benefit, as a result of enforcing the sections, will be the prohibition of balance billing and establishing a specified timeframe for a provider to file a complaint or appeal.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposal may be submitted to Lesa Ledbetter, at Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200, by fax to (512) 491-1953, or by e-mail to lesa.ledbetter@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### Public Hearing

A public hearing is scheduled for August 16, 2005 from 1:00 p.m. to 2:00 p.m. (central time) in the Public Hearing Room of the Winters Complex at 701 W. 51st St, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Carmen Capetillo at (512) 491-1104.

#### Statutory Authority (CHIP)

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed new rules affect the Texas Health and Safety Code, Chapter 62, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposed new rules.

#### §370.401. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Claim Appeal--An HMO or EPO review of Claims Processing Entity's denial of a provider's claim(s) by the Claims Processing Entity for technical and non-medical reasons. This process does not constitute a hearing on the denial.

(2) Claim Complaint--dissatisfaction with the disposition of a claim by the Claims Processing Entity.

(3) Claims Processing Entity--the HMO, EPO or its subcontractor who processes claims for the CHIP.

(4) Day--A calendar day.

(5) Eligible Provider--A network or non-network provider of medical services to a covered CHIP member.

(6) Final Decision--A decision that is reached by TDI regarding a Claim Complaint.

(7) Significant Traditional Provider or STP--A provider with whom CHIP members have well-established or longstanding provider/client relationships, or to whom the members have typically or traditionally gone for health care.

(8) TDI--The Texas Department of Insurance

§370.403. Definition of Significant Traditional Provider.

(a) A provider falling within the definition in §370.401(7) of this subchapter, (relating to Significant Traditional Provider or STP) shall be determined by criteria established by the Commission.

(b) If a provider is not initially determined to be an STP, the provider may appeal that determination by sending a written notice to the Health and Human Services Commission, Children's Health Insurance Program, P.O. Box 13247, Austin, Texas 78711-3247, stating that it wishes to appeal the STP determination. The Commission will then notify the provider of the appeal procedure to follow.

§370.405. Balance Billing.

(a) Eligible providers must agree that payment received by the HMO or EPO for covered services will be accepted as payment in full and they must agree that they will not bill the member or the member's guardian for any remaining balance for services rendered.

(b) Providers may not bill or take other recourse against the member or the member's guardian for claims denied as a result of error attributed to the eligible provider or Claims Processing Entity.

§370.407. Claims Appeal Timelines.

(a) Claims Appeal

(1) A Claims Appeal is a request for a claim review as defined in §370.401(1) of this subchapter.

(2) A Claims Appeal must be:

(A) submitted in writing to the HMO or EPO by the provider delivering the service or claiming reimbursement for the service, and

(B) received by the HMO or EPO within 120 Days from the date of disposition by the Claims Processing Entity as evidenced by the Remittance and Status report sent to providers.

(C) Additional information requested by the Claims Processing Entity must be returned to the Claims Processing Entity within 21 Days from the date of the letter from the Claims Processing Entity. If the information is not received within 21 Days, the case will be closed.

(b) Claim Complaint

(1) A Provider may express dissatisfaction with the disposition of a claim and request an informal review by TDI.

(2) The Claim Complaint must be:

(A) submitted to TDI after the appeal process with the Claims Processing Entity has been exhausted, and the documentation to the state must contain evidence of previous Claims Processing Entity appeal dispositions, and

(B) complete and contain all of the information necessary for consideration and determination by TDI, including a written explanation of the complaint and supporting documentation for the request.

(3) Providers must adhere to all TDI filing and appeal deadlines for the complaint to be reviewed by TDI.

(4) TDI is responsible for all Claim Complaints. A Claim Complaint will be reviewed and a determination made by TDI within 60 Days from TDI's receipt of the Claim Complaint. A determination made by TDI is the Final Decision for a Claim Complaint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503116

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 424-6900

## **TITLE 4. AGRICULTURE**

### **PART 1. TEXAS DEPARTMENT OF AGRICULTURE**

#### **CHAPTER 7. PESTICIDES**

The Texas Department of Agriculture (the department) proposes amendments to §§7.10, 7.20, 7.23, 7.24, and 7.35 concerning pesticide registration and regulation. The amendment to §7.10, relating to registration of pesticides, are primarily made to eliminate the use of proration in licensing fees, to make the collection of fees for pesticide registration consistent with the collection of other agency fees. The amendment of §7.10(a)(4), is proposed to eliminate a reference to subsection §7.10(f) in the department's rules. The amendment to §7.10(f) is proposed to eliminate fee proration of pesticide registration fees. The amendment to §7.10(g) is proposed to delete the requirement that written recommendations allowed by Federal law be approved by the department prior to release.

The amendments to §7.20, relating to commercial and noncommercial pesticide applicator licenses, are made to comply with amendments made by HB 901, enacted by the 79th Legislature, 2005. HB 901 amends Section 76.113 of the Texas Agriculture Code to provide that all new commercial, noncommercial, and private applicator licenses will no longer expire on the last day of February, but rather by the first anniversary of the date of issuance or renewal. This change does away with the need to prorate license fees. The amendment to §7.20(c) is proposed to delete language relating to fee proration. The amendment to §7.20(e) is proposed to eliminate proration of pesticide applicator fees.

The amendments to §7.23 are proposed to clarify that an applicator business must provide proof of financial responsibility to the department on a form prescribed by the department and that the applicator business must notify the department of any changes of information provided as part of the registration application. The amendment to §7.24(s) is proposed to clarify that the department will verify that an applicator has obtained the required CEUs through an audit process. The amendment to §7.24(t) is proposed to require that an applicator obtain the required number of CEUs prior to the expiration of the license. The amendment to §7.35 is proposed to clarify that application equipment used to apply a restricted use or state-limited-use pesticide or regulated herbicide is required to be registered with the department on a prescribed form.

Jimmy Bush, assistant commissioner for pesticide programs, has determined that for the first five-year period the proposed amendments are in effect there is no anticipated fiscal impact for state and local governments as a result of administering or enforcing the amended sections, as proposed.

Mr. Bush also has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of administering and enforcing the amended sections, as proposed, will be that the amendments will create less confusion for the applicant about the correct license fee amount. The amendments will also allow the department to more evenly distribute licensing workflow throughout the year, which will provide for a better turnaround time to customers. There is a cost anticipated to some micro-businesses, small businesses or individuals required to comply with the amendments to §7.10. There will be a fiscal impact on pesticide registrants who have multiple products registered that have the same expiration date, and who register any new products and want the new products to have the same expiration date as their existing products. Those registrants will be required to pay the full fee rather than a prorated fee, regardless of the amount of time remaining until the existing products renew.

Comments on the proposal may be submitted to Jimmy Bush, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

## SUBCHAPTER B. REGISTRATION

### 4 TAC §7.10

The amendments to §7.10 are proposed under Texas Agriculture Code (the Code), §76.004, which provides that the department may adopt rules for carrying out the provisions of the Code, Chapter 76; the Code, §76.041, which requires that a pesticide be registered with the department before it is distributed in this state, is delivered for transportation, or is transported in intrastate commerce or between points within this state through a point outside the state; and the Code, §76.043, which provides the department with the authority to adopt by rule a schedule for expiration of registrations.

The code affected by the proposal is the Texas Agriculture Code, Chapter 76.

#### §7.10. *Registration of Pesticides.*

(a) In addition to the requirements contained in the Act, Subchapter C (concerning registration), the application for registration of a pesticide shall include:

- (1) - (3) (No change.)

(4) A fee of \$420 per product registered for a two-year period. A registrant that has existing products registered and wishes to have all products renew on the same date may choose to do so, except that any new product registered during the two year period must be accompanied by the full fee. [This fee may be prorated in accordance with subsection (f) of this section.]

- (b) - (e) (No change.)

(f) All pesticide products registered by a registrant must be renewed by the scheduled renewal date included in the registration package as provided by the department. [Any new product registered by a registrant will be prorated by quarter so that the registration will expire at the same time as all other pesticide products of the registrant.]

[(g) Any written recommendations allowed by FIFRA 2(cc) must be approved by the department prior to being released into the channels of trade.]

(g) [(h)] Registration is not required for a chemical composition being used only to develop plot data on a total of 10 acres or less in the state.

(h) [(i)] After a product is registered with the department, registrants shall provide the department the most current pesticide product label any time the product label is amended. Before distributing the revised product label, the registrant must have written department approval in addition to any applicable federal requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2005.

TRD-200503090

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 463-4075



## SUBCHAPTER C. LICENSING

### 4 TAC §§7.20, 7.23, 7.24

The amendments to §§7.20, 7.23 and 7.24 are proposed under Texas Agriculture Code (the Code), §76.004, which provides that the department may adopt rules for carrying out the provisions of the Code, Chapter 76; the Code, §76.005, which provides that a person may not purchase or use a restricted-use or state-limited-use pesticide or regulated herbicide unless the person is licensed as a commercial applicator, noncommercial applicator, or private applicator; the Code, §76.072, which provides that a pesticide dealer license expires on the second anniversary of the date of its granting or renewal unless the department by rule adopts a system under which licenses expire on specified dates during a year; the Code, §76.104, which provides the department with the authority to adopt rules related to the use and application of pesticides; §76.111, which provides that each applicator business licensed by the department shall file with the department a liability insurance policy, certification of a policy, or other proof of financial responsibility considered acceptable by the department; and the Code, §76.113, as amended by HB 901, 79th Legislature, 2005, which provides an expiration period for commercial and noncommercial pesticide applicators.



The code affected by the proposal is the Texas Agriculture Code, Chapter 76.

*§7.20. Application.*

(a) - (b) (No change.)

(c) Except as provided by Chapter 2, Subchapter B of this title (relating to Consolidated Licenses), the license is valid for two years and shall expire on the last day of the month corresponding to the license anniversary date. [~~fee for a new dealer license will be prorated as outlined on the License Application form to coincide with the December 31st expiration date.~~] Renewals made after the expiration date are subject to applicable late fees.

(d) (No change.)

~~[(e) Fees for a new commercial or noncommercial applicator license application submitted after September 1 of each year will be prorated to include the remaining months of the current licensing year and the following licensing year.]~~

(e) ~~[(f)]~~ A pesticide applicator or dealer's license is not transferable. Change of ownership of an outlet or facility shall require a new application and applicable fees to be submitted.

(f) ~~[(g)]~~ The licensee shall notify the department within 30 days of any change in the information provided as part of the application for a license. Failure to provide such information may be grounds for denial, suspension or revocation of the license.

(g) ~~[(h)]~~ A commercial or noncommercial applicator in good standing may convert the license between these two categories by making application to the department and meeting the requirements for that license, including fees.

*§7.23. Applicator Business Proof of Financial Responsibility.*

Each applicator business, as defined in the Act, §76.111, shall register [~~file~~] with the department on a prescribed form and file proof of financial responsibility prior to making any applications of restricted-use or state-limited-use pesticides or regulated herbicides. This requirement shall be satisfied in the following manner.

(1) If the applicator business is a licensed commercial applicator, the applicator shall, on application for [~~or renewal of~~] the commercial applicator license, attest to the existence of adequate financial responsibility in the amounts and under the terms stated in the Act, §76.111 on a form provided by the department.

(2) An applicator business that is not a licensed commercial applicator, but instead employs one or more licensed commercial applicators, shall attest to the existence of adequate financial responsibility in the amounts and under the terms stated in the Act, §76.111 on a form provided by the department.

(3) Commercial applicators who are employees or agents of an applicator business shall be required to state, on application for [~~or renewal of~~] their commercial applicator license, the name of the applicator business by whom they are employed. Employees or agents of an applicator business are prohibited from making any applications of restricted-use or state-limited-use pesticides or regulated herbicides until such time as the applicator business has complied with paragraph (2) of this section.

(4) The applicator business shall notify the department within 30 days of any change in the information provided as part of the registration application.

*§7.24. Applicator Recertification.*

(a) - (r) (No change.)

(s) Applicators will recertify through a self-certification program. Each applicator will be required to maintain proof of the number of CEUs necessary to renew a license or certificate. Certificates of completion verifying attendance at approved activities during the previous licensing period must be maintained by the applicator for a period of 12 months after the most recent renewal of their license or certificate. The department may audit the CEUs an applicator has obtained during an onsite inspection or by letter requesting that copies of certificates of completion be mailed to the department. Certificates of completion will be compared with course rosters on file with the department. Credits obtained at a single course cannot be split or divided between licensing periods. [Applicators who have met their CEU requirements prior to December 31 may apply CEUs obtained the following January and/or February of their recertification year to the next recertification cycle.]

(t) Each commercial or noncommercial applicator must obtain at least five CEUs prior to the expiration of the license. [~~during the 12 months preceding December 31 in order to recertify and renew a license for the following year. A commercial or noncommercial applicator whose initial license is issued on or after September 1 must obtain the required CEUs anytime during the effective license period.~~] A minimum of one hour each must be obtained from two of the following categories: integrated pest management, laws and regulations or drift minimization. A commercial or noncommercial applicator may not recertify their license using department-approved correspondence activities for two consecutive years.

(u) - (z) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2005.

TRD-200503091

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 463-4075



## SUBCHAPTER D. USE AND APPLICATION

### 4 TAC §7.35

The amendments to §7.35 are proposed under Texas Agriculture Code (the Code), §76.004, which provides that the department may adopt rules for carrying out the provisions of the Code, Chapter 76; the Code, §76.104, which provides the department with the authority to adopt rules related to the use and application of pesticides; and the Code, §76.115, which provides that the department may inspect equipment used in the application of a restricted-use or state-limited-use pesticide, and that the department by rule may provide requirements for and inspect equipment.

The code affected by the proposal is the Texas Agriculture Code, Chapter 76.

*§7.35. Registration and Inspection of Equipment.*

(a) Application equipment used to apply a restricted-use or state-limited-use pesticide or regulated herbicide to the land of another for compensation must be registered with the department on prescribed forms and identified by a license decal. The department shall issue a

license decal to be attached to each such piece of equipment in a conspicuous place. The license decal will contain the following information:

- (1) an identification number; and
- (2) the name of the issuing agency.

(b) Notification shall be given to the department on prescribed forms of any equipment ownership changes and the license decal must be removed before giving up possession of the equipment.

(c) All application equipment used for pesticide applications is subject to inspection by the department at any reasonable time. Such equipment must be maintained in a condition that will provide safe and proper application of the pesticide. If the inspector finds that it is not, the department shall require the needed repairs or adjustments before allowing the use of such equipment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2005.

TRD-200503092

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 463-4075

◆ ◆ ◆

## **TITLE 10. COMMUNITY DEVELOPMENT**

### **PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

#### **CHAPTER 80. MANUFACTURED HOUSING**

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes new §§80.57, 80.58, 80.123, 80.129, 80.181, 80.240 in new Subchapter H (Tables and Figures) and 80.260 in new Subchapter I (Forms) and amendments to §§80.10, 80.11, 80.20, 80.53 - 80.56, 80.62, 80.64, 80.66, 80.119 - 80.122, 80.125 - 80.128, 80.130 - 80.133, 80.135, 80.180, 80.183, 80.201, 80.205, and 80.208 for the following purpose: to comply with HB 2438 (79th Legislature, 2005 Regular Session), make the rules more useful, practical and as understandable as possible; organize rules by related subjects more logically; eliminate unnecessary or redundant verbiage; and clean up areas of confusion or conflict.

Because the Department no longer employs an engineer, the drawings in proposed §80.240(b)(9), 80.240(b)(22), and 80.240(b)(23) have not been reviewed or approved by a Department engineer.

Section 80.10 is revised to update the rule with the current installation and construction standards.

Section 80.11 - Deleting unnecessary definitions, ones that are addressed in other rules or that exist in the State and Federal statutes, proposing new definitions and revising existing definitions for clarification.

Section 80.20 - Revised rule to comply with HB 2438 (79th Legislature, 2005 Regular Session), for clarification, and updating

of fees. Also, relocated fees for Statements of Ownership and Location from §80.202 to §80.20(j).

Section 80.53 - Changed title of rule and revised for clarification.

Section 80.54 - Revised to organize in a more logical manner and eliminate unnecessary or redundant verbiage. The tables and figures are relocated to new Subchapter H (Tables and Figures).

Figure: 10 TAC §80.54(g) - Moved Site Preparation Notice to §80.260(a)(1).

Figure: 10 TAC §80.54(h)(3) - Moved footer configurations to §80.240(b)(22).

Figure: 10 TAC §80.54(h)(4) - Moved footer capacities table to §80.240(a)(8).

Figure: 10 TAC §80.54(h)(6) - Moved pier design figure to §80.240(b)(23).

Figure: 10 TAC §80.54(h)(6)(B) - Moved pier loads without perimeter supports table to §80.240(a)(9).

Figure: 10 TAC §80.54(h)(6)(C) - Moved pier loads with perimeter supports table to §80.240(a)(10) and moved perimeter pier front and side view figure to §80.240(b)(24).

Figure: 10 TAC §80.54(h)(7) - Moved typical multi-section pier layout figure to §80.240(b)(25).

Figure: 10 TAC §80.54(h)(8) - Moved typical single section pier layout figure to §80.240(b)(26).

Figure: 10 TAC §80.54(h)(9)(A) - Moved determining column load and marriage line elevation figure to §80.240(b)(27).

Figure: 10 TAC §80.54(h)(9)(D) - Moved mating line column loads table to §80.240(a)(11).

Section 80.55 - Revised to organize in a more logical manner and eliminate unnecessary or redundant verbiage. The tables and figures are relocated to new Subchapter H (Tables and Figures).

Figure: 10 TAC §80.55(a) - Moved counties Located in Wind Zone II figure to §80.240(b)(1).

Figure: 10 TAC §80.55(c)(1) - Moved anchor installation figure to §80.240(b)(2).

Figure: 10 TAC §80.55(c)(2) - Moved placement of stabilizing plates figure to §80.240(b)(3).

Figure: 10 TAC §80.55(d)(1) - Moved Wind Zone I Installation figure to §80.240(b)(4).

Figure: 10 TAC §80.55(d)(2) - Moved maximum spacing for diagonal ties table to §80.240(a)(1).

Figure: 10 TAC §80.55(d)(3) - Moved minimum number of diagonal ties table to §80.240(a)(2).

Figure: 10 TAC §80.55(e)(1) - Moved maximum spacing for diagonal ties per side table to §80.240(a)(3).

Figure: 10 TAC §80.55(e)(2)(E) - Moved diagonal strap placement figure to §80.240(b)(5).

Figure: 10 TAC §80.55(e)(2)(F) - Moved diagonal and vertical ties figure to §80.240(b)(6).

Figure: 10 TAC §80.55(f)(1) - Moved maximum centerline wall opening for column uplift brackets table to §80.240(a)(4).

Figure: 10 TAC §80.55(f)(4) - Moved the typical installation details figure to §80.240(b)(7).

Figure: 10 TAC §80.55(f)(5)(D) - Moved the anchor span figure to §80.240(b)(8).

Figure: 10 TAC §80.55(f)(6)(D) - Moved the longitudinal ties figure to §80.240(b)(10).

Section 80.56 - Revised for clarification and to relocate the tables and figures to new Subchapter H (Tables and Figures).

Figure: 10 TAC §80.56(a)(4) - Moved the mating line surfaces figure to §80.240(b)(11).

Figure: 10 TAC §80.56(b)(5) - Moved the floor connections table to §80.240(a)(5) and moved the floor connections figure to §80.240(b)(12).

Figure: 10 TAC §80.56(c)(2) - Moved the endwall connections figure to §80.240(b)(13).

Figure: 10 TAC §80.56(d)(3) - Moved the roof connections table to §80.240(a)(6).

Figure: 10 TAC §80.56(d)(4) - Moved the roof connection figure to §80.240(b)(14).

Figure: 10 TAC §80.56(e)(6) - Moved the exterior roof close up figure to §80.240(b)(15).

Figure: 10 TAC §80.56(g)(4) - Moved the HVAC crossover figure to §80.240(b)(16).

Figure: 10 TAC §80.56(h)(1) - Moved the multi-section water crossover connection figure to §80.240(b)(17).

Figure: 10 TAC §80.56(i)(2)(F) - Moved the Drain, Waste and Vent Floor Piping System figure to §80.240(b)(18).

Figure: 10 TAC §80.56(j)(2) - Moved the chassis bonding figure to §80.240(b)(19).

Figure: 10 TAC §80.56(j)(3) - Moved the electrical crossover figure to §80.240(b)(20).

Figure: 10 TAC §80.56(j)(6) - Moved the main panel box feeder conductor sizes table to §80.240(a)(7).

Figure: 10 TAC §80.56(k)(2) - Moved the fuel gas pipe crossover connections figure to §80.240(b)(21).

New §80.57 - Relocated text previously in §80.54(f) and (g) to organize and group in a more logical manner and moved the tables and figures previously included with the text to new Subchapter H (Tables and Figures).

New §80.58 - Relocated text previously in §80.54(h) to organize and group in a more logical manner and moved the tables and figures previously included with the text to new Subchapter H (Tables and Figures).

Section 80.62 - The Department now registers stabilizing components and systems, but no longer approves them. Also, revisions were made for clarification.

Section 80.64 - Revised alteration procedures for clarification and to remove unnecessary text.

Section 80.66 - Updated rule for clarification.

Section 80.119 - Revised rule for clarification.

Section 80.120 - Added the monthly shipment report rule that was previously located in repealed §80.203, revised rule references and revised for clarification.

Section 80.121 - Revised rule to comply with HB 2438 (79th Legislature, 2005 Regular Session), added text from repealed

§80.200(b) relating to conveyance of a good and marketable title, §80.181 relating to providing the 162 Notice, and 80.182 relating to providing the 163 Disclosure. Other text updated for clarification and relocated disclosure forms associated with §§80.181 and 80.182 to new Subchapter I (Forms).

Section 80.122 - Revised rule for clarification.

New §80.123 - Repealed previous rule to re-organize the license requirements in a more logical manner, made revisions to comply with HB 2438 (79th Legislature, 2005 Regular Session), and added a new section that explains new and renewed licenses will not be valid if all required fees are not paid.

Section 80.125 - Updated rule for clarification and added a section requiring disclosure of license number of the person advertising.

Section 80.126 - Revised for consistency.

Section 80.127 - Updated rule for clarification and added new sections to include text from repealed §80.129(g) through (m).

Section 80.128 - Updated reference to "working days" to "business days" and capitalized "Department."

New §80.129 - Replacing repealed rule with new rule that explains the department offers alternative dispute resolution. Moved relevant text in the repealed rule to §80.127 and moved the Enforcement Matrix figure in subsection (g) to §80.240(a)(12).

Section 80.130 - Updated rule for clarification.

Section 80.131 - Updated rule for clarification.

Section 80.132 - Updated rule for clarification.

Section 80.133 - Updated rule for clarification.

Section 80.135 - Updated rule for clarification.

Section 80.180 - Capitalized "Department" for consistency.

New §80.181 - Replaced repealed rule with a new rule to comply with HB 2438 (79th Legislature, 2005 Regular Session).

Section 80.183 - Updated rule for clarification.

Section 80.201 - Revised rule to comply with HB 2438 (79th Legislature, 2005 Regular Session), for clarification and to organize in a more logical manner.

Section 80.205 - Updated rule by keeping the section on Inventory Finance Liens, deleted the unnecessary sections on Release of Liens and Foreclosure or Repossession and moved the section on right of survivorship to §80.201.

Section 80.208 - Revised rule for clarification and to comply with HB 2438 (79th Legislature, 2005 Regular Session).

New §80.240 is in new Subchapter H relating to Tables and Figures. The tables from various rules are located in subsection (a) and the figures are located in subsection (b) for easier referencing.

Figure: 10 TAC §80.240(a)(1) - Maximum Spacing for Diagonal Ties.

Figure: 10 TAC §80.240(a)(2) - Minimum Number of Diagonal Ties.

Figure: 10 TAC §80.240(a)(3) - Maximum Spacing for Diagonal Ties per side of the Assembled Unit.

Figure: 10 TAC §80.240(a)(4) - Bracket Installation--Maximum Centerline Wall Opening for Column Uplift Brackets.

Figure: 10 TAC §80.240(a)(5) - Floor Connections--Wind Zone I and II.

Figure: 10 TAC §80.240(a)(6) - Roof Connection--Fastener Type and Spacing.

Figure: 10 TAC §80.240(a)(7) - Main Panel Box Feeder Conductor Sizes.

Figure: 10 TAC §80.240(a)(8) - Footer Capacities.

Figure: 10 TAC §80.240(a)(9) - Pier Loads without Perimeter Supports.

Figure: 10 TAC §80.240(a)(10) - Pier Loads with Perimeter Supports.

Figure: 10 TAC §80.240(a)(11) - Mating Line Column Loads.

Figure: 10 TAC §80.240(a)(12) - Enforcement Matrix.

Figure: 10 TAC §80.240(b)(1) - Counties Located in Wind Zone II.

Figure: 10 TAC §80.240(b)(2) - Anchor Installation.

Figure: 10 TAC §80.240(b)(3) - Placement of Stabilizing Devices.

Figure: 10 TAC §80.240(b)(4) - Wind Zone I Installation (Single & Multi-Section).

Figure: 10 TAC §80.240(b)(5) - Diagonal Strap Placement for Piers Exceeding 36 in. in Height.

Figure: 10 TAC §80.240(b)(6) - Diagonal and Vertical Ties.

Figure: 10 TAC §80.240(b)(7) - Typical Installation Details.

Figure: 10 TAC §80.240(b)(8) - Anchor Span.

Figure: 10 TAC §80.240(b)(9) - Typical Longitudinal Stabilizing Device. NOTE: Because the Department no longer employs an engineer, this proposed drawing has not been reviewed or approved by a Department engineer.

Figure: 10 TAC §80.240(b)(10) - Longitudinal Ties.

Figure: 10 TAC §80.240(b)(11) - Mating Line Surfaces.

Figure: 10 TAC §80.240(b)(12) - Floor Connections.

Figure: 10 TAC §80.240(b)(13) - Endwall Connections.

Figure: 10 TAC §80.240(b)(14) - Roof Connection.

Figure: 10 TAC §80.240(b)(15) - Exterior Roof Close Up.

Figure: 10 TAC §80.240(b)(16) - HVAC (Heat/Cooling) Duct Crossover.

Figure: 10 TAC §80.240(b)(17) - Multi-Section Water Crossover Connections.

Figure: 10 TAC §80.240(b)(18) - Drain, Waste and Vent Floor Piping System.

Figure: 10 TAC §80.240(b)(19) - Chassis Bonding.

Figure: 10 TAC §80.240(b)(20) - Electrical Crossover.

Figure: 10 TAC §80.240(b)(21) - Fuel Gas Pipe Crossover Connections.

Figure: 10 TAC §80.240(b)(22) - Footer Configurations. NOTE: Because the Department no longer employs an engineer, this

proposed drawing has not been reviewed or approved by a Department engineer.

Figure: 10 TAC §80.240(b)(23) - Pier Design (Single and Multi-Section Stack). NOTE: Because the Department no longer employs an engineer, this proposed drawing has not been reviewed or approved by a Department engineer.

Figure: 10 TAC §80.240(b)(24) - Perimeter Pier Front & Side View.

Figure: 10 TAC §80.240(b)(25) - Typical Multi-Section Pier Layout.

Figure: 10 TAC §80.240(b)(26) - Typical Single Section Pier Layout.

Figure: 10 TAC §80.240(b)(27) - Determining Column Load and Marriage Line Elevation.

New §80.260 is in new Subchapter I relating to Forms. The required forms from various rules are located in subsection (a) and the optional forms are located in subsection (b) for easier referencing. Also, revised forms to comply with HB 2438 (79th Legislature, 2005 Regular Session).

Figure: 10 TAC §80.260(a)(1) - Site Preparation Notice.

Figure: 10 TAC §80.260(a)(2) - Consumer Disclosure Statement.

Figure: 10 TAC §80.260(a)(3) - Consumer Protection Disclosure - Chattel Mortgage Transactions.

Figure: 10 TAC §80.260(a)(4) - Notice of Installation (Form T).

Figure: 10 TAC §80.260(a)(5) - Estimate for Reassigned Warranty Work.

Figure: 10 TAC §80.260(a)(6) - Application for Statement of Ownership and Location.

Figure: 10 TAC §80.260(a)(7) - Release or Foreclosure of Lien (Form B).

Figure: 10 TAC §80.260(a)(8) - Quick Processing Form.

Figure: 10 TAC §80.260(a)(9) - Form M.

Figure: 10 TAC §80.260(a)(10) - Affidavit of Fact for Right of Survivorship.

Figure: 10 TAC §80.260(a)(11) - Retailer/Broker Disclosure Statement.

Figure: 10 TAC §80.260(a)(12) - Warranty of Habitability.

Figure: 10 TAC §80.260(a)(13) - Continuous Manufactured Housing Surety Bond.

Figure: 10 TAC §80.260(a)(14) - Tax Lien Record/Release.

Figure: 10 TAC §80.260(a)(15) - Affidavit of Fact for Abandonment.

Figure: 10 TAC §80.260(a)(16) - Manufacturer's Certificate of Origin.

Figure: 10 TAC §80.260(b)(1) - Spanish Version of Consumer Disclosure Statement.

Figure: 10 TAC §80.260(b)(2) - Statement of No Unpaid Taxes.

Figure: 10 TAC §80.260(b)(3) - Important Notice of Intent to Acquire Ownership of an Abandoned Manufactured Home.

Timothy K. Irvine, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that these new and amended sections as proposed are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections.

The following are the anticipated economic costs to persons/businesses that are required to comply with the proposed rules.

Section 80.20(a)(6) increases the salesperson's license fee from \$100 to \$200, but the fee is actually the same because HB 2438 (79th Legislature, 2005 Regular Session) changed the one-year license to a two year license.

Section 80.20(b)(1) increases the installation reporting fee for a single section manufactured home from \$75 to \$100 and adds a fee of \$25 for each additional section. Currently, it costs the Department over \$100 to inspect a manufactured home, so the increase is necessary. The additional fee of \$25 for each section is also necessary because inspecting multi-section manufactured homes takes more time to inspect than a single section.

Section 80.20(j)(4) increases the fee for correction of an SOL from \$25 to \$55, which is the original fee before the rule changed to \$25 in September 2004.

Except for the above, there are no other proposed new and amended sections expected to have material economic costs to persons/businesses that are required to comply with these sections as proposed.

Mr. Irvine also has determined that for each year of the first five years these new and amended sections as proposed are in effect the public benefit as a result of enforcing the sections will be: organize rules by related subjects more logically; eliminate unnecessary or redundant verbiage; clean up areas of confusion and conflict; make the rules more useful, practical and as understandable as possible; clarify responsibilities that will increase compliance; and assure that the rules embrace a balanced overall approach that enhances compliance for the benefit of both the industry and consumers while accommodating the needs of related industries.

The Department will conduct a hearing on the proposed rules on Monday, September 12, 2005 at 9:00 a.m. at the Austin Headquarters located in the Waller Creek Office Building at 507 Sabine, 4th Floor Boardroom, Austin, Texas 78701.

Comments may be submitted to Mr. Timothy K. Irvine, Executive Director of the Manufactured Housing Division, of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489 or by e-mail at the following address [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

## SUBCHAPTER A. CODES AND STANDARDS

### 10 TAC §80.10

The amended section is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed amended rule.

#### *§80.10. Texas Manufactured Housing Standards Code.*

The standards and requirements for the installation and construction of manufactured housing adopted by the director in accordance with §1201.251(a)(1) of the Texas Manufactured Housing Standards Act (Standards Act) are as follows:

(1) The construction standards set out in Title VI of the Housing and Community Development Act of 1974, as the same may be amended from time to time, or under any official rule, official interpretation, or adopted standard issued or adopted by the Department of Housing and Urban Development under such law;

(2) The installation standards set forth in this chapter; and

(3) Applicable standards for installation components established by

(A) Chapter 43 of the latest edition of the International Residential Code;

(B) The stabilizing component destruction test failure criteria of the FMHCSS (24 CFR, Part 3280) and the latest edition of the International Residential Code, Appendix E; and

(C) The American Wood Preserver's Association and referenced by the latest edition of the International Residential Code Preservation for treated (PT) wood components.

(4) Collectively, the foregoing, together with the Standards Act and these rules, are referred to as the Texas Manufactured Housing Standards Code ("the Code").

{(a) The Texas Manufactured Housing Standards Code for HUD-Code manufactured homes shall be the Federal Standards established under Title VI of the Housing and Community Development Act of 1974 and each change, amendment, or requirement shall become effective in conjunction with the effective date set by the federal program.}

{(b) The historical record of standards adopted for manufactured homes in accordance with the Standards Act, is as follows:}

{(1) Prior to December 11, 1969: none;}

{(2) December 12, 1969 - August 31, 1971: American National Standards Institute (ANSI); A119.1-1963; plumbing, heating and electrical;}

{(3) September 1, 1971 - December 15, 1971: none;}

{(4) December 15, 1971 - February 16, 1972: ANSI; A119.1-1969; plumbing, heating and electrical;}

{(5) February 17, 1972 - January 31, 1973: ANSI; A119.1-1973; plumbing, heating and electrical;}

{(6) February 1, 1973 - September 19, 1973: ANSI; A119.1-1973; plumbing, heating, electrical and construction;}

{(7) September 20, 1973 - August 31, 1974: ANSI; A119.1-1973; plumbing, heating, electrical and construction;}

{(8) September 1, 1974 - June 14, 1976: ANSI; A119.1-1974; plumbing, heating, electrical and construction; and}

{(9) June 15, 1976 - Future: HUD-Code--National Manufactured Home Construction and Safety Standards; Part 3280, promulgated by the United States Department of Housing and Urban Development (HUD); Code of Federal Regulations (CFR); Title 24.}

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503140

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 475-2206



## SUBCHAPTER B. DEFINITIONS

### 10 TAC §80.11

The amended section is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed amended rule.

#### §80.11. Definitions.

Terms used herein that are defined in the Code and the Standards Act have the meanings ascribed to them therein. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

~~{(1) Alteration--The replacement, addition, and modification or removal of any equipment or its installation after sale by the manufacturer to a retailer, but prior to sale and installation to a purchaser which may affect the construction, fire safety, occupancy plumbing, heat-producing, or electrical system. An alteration is deemed to be prior to sale if the alteration is part of the retail sales contract. It includes any modification made in the manufactured home which may affect the compliance of the home with the standards; but it does not include the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring "plug-in" to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer; if the rating of the appliance does not exceed the rating of the receptacle to which it is connected (FMHCSS §3287.7(c)).}~~

~~{(2) Anchoring components--Any component which is attached to the manufactured home and is designed to resist the horizontal and vertical forces imposed on the manufactured home as a result of wind loading. These components include auger anchors, rock anchors, slab anchors, ground anchors, stabilizing plates, connection bolts, j-hooks, buckles, and split bolts.}~~

~~{(3) Anchoring equipment--Straps, cables, turnbuckles, and chains, including tensioning devices, which are used with ties to secure a manufactured home to anchoring components or other approved devices.}~~

~~{(4) Anchoring systems--Combination of ties, anchoring components, and anchoring equipment that will resist overturning and lateral movement of the manufactured home from wind forces.}~~

~~(1) [(5)] APA--Administrative Procedure Act, Texas Government Code, Chapter 2001.~~

~~{(6) Attachment--With respect to a manufactured home, that it has been installed in accordance with the Department's rules and connected to any one or more utilities including, but not limited to, electricity, water, natural gas, propane or bottled gas, or wastewater service. For purposes of determining whether a manufactured home is attached, the presence of installation deviations or violations shall not invalidate the home's status as being attached.}~~

~~{(7) Board--Governing Board of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs.}~~

~~(2) Business days--Includes every day on the calendar except Saturday, Sunday, and federal and state holidays.~~

~~{(8) Business use--Any use other than for dwelling purposes.}~~

~~{(9) Calendar days--Includes every day on the calendar.}~~

~~(3) [(40)] Certificate of Attachment--A certificate issued by the Department [department] to the person who surrenders the Manufacturer's Certificate of Origin or document of title when the home has been permanently attached [affixed] to real estate. Certificates of Attachment are no longer issued after June 18, 2003.~~

~~(4) [(41)] Chattel Mortgage or Consumer Loan--Any loan that is not subject to the Real Estate Settlement Procedures Act (RESPA). [A loan subject to Chapter 347, Texas Finance Code, that is not a mortgage loan.}~~

~~(5) [(42)] Coastline--The shoreline that forms the boundary between the land and the Gulf of Mexico or a bay or estuary connecting to the Gulf of Mexico that is more than five miles wide.~~

~~(6) [(43)] Credit document--All [The credit sale contract or the loan instruments including all] the written agreements between the consumer and creditor that describe or are required in connection with an actual [relate to the] credit transaction.~~

~~(7) [(44)] Creditor--A person involved in a credit transaction who:~~

~~(A) extends or arranges the extension of credit; or~~

~~(B) is a retailer or broker as defined in the Standards Act and participates in arranging for the extension of credit.~~

~~{(15) Creditor-Lender--A person that is involved in extending or arranging for credit in inventory financing secured by manufactured housing.}~~

~~(8) [(46)] Custom designed stabilization system--An anchoring and support system that is not an approved method as prescribed by the state generic standards, manufacturer's installation instructions, or other systems pre-approved by the Department [department].~~

~~(9) Dangerous conditions--Any condition which, if present, would constitute an imminent threat to health or safety.~~

~~(10) [(47)] DAPIA--The Design Approval Primary Inspection Agency.~~

~~{(18) Defect--A failure to comply with an applicable federal manufactured home safety and construction standard that renders~~

the manufactured home or any part or component thereof not fit for the ordinary use for which it was intended, but does not result in an unreasonable risk of injury or death to occupants of the affected manufactured home (FMHCSS §3282.7(j)).

(11) [(49)] Department or TDHCA--The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA).

[(20)] Department inspector--An inspector who is an employee of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs or an inspector who is an employee of an entity performing inspection services under contract with the department.

(12) [(21)] Deposits--Money or other consideration given by a consumer to a retailer, salesperson, or agent of a retailer to hold a manufactured home in inventory for subsequent purchase or to special order a home for subsequent purchase.

[(22)] Diagonal tie--A tie intended to primarily resist horizontal forces, but which may also be used to resist vertical forces.

[(23)] Director--The Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA).

(13) [(24)] Down Payment--An amount, including the value of any property used as a trade-in, paid to a retailer to be applied to the purchase [to reduce the cash] price of a manufactured home [goods or services purchased in a credit sale transaction].

(14) [(25)] Dwelling unit--One or more habitable rooms which are designed to be occupied [by one family with facilities] for living[, sleeping, cooking and eating].

(15) [(26)] FMHCSS--Federal Manufactured Home Construction and Safety Standards that implement the National Manufactured Home Construction and Safety Standards Act of 1974, 42 USC 5401, et seq., as amended from time to time [and means a reasonable standard for the construction, design, and performance of a manufactured home which meets the needs of the public including the need for quality, durability, and safety].

[(27)] Footing--That portion of the support system that transmits loads directly to the soil.

[(28)] Ground anchor--Any device at the manufactured home site designed to transfer manufactured home anchoring loads to the ground.

(16) [(29)] HUD-Code manufactured home--A structure constructed on or after June 15, 1976, according to the rules of HUD; transportable in one or more sections; which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length; or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems. The term does not include a recreational vehicle as that term is defined by 24 CFR, §3282.8(g).

(17) [(30)] Imminent safety hazard--A hazard that presents an imminent and unreasonable risk of death or severe personal injury that may or may not be related to failure to comply with an applicable federal manufactured home construction and safety standard (FMHCSS §3282.7(q)).

(18) [(31)] Independent testing laboratory--An agency or firm that tests products for conformance to standards and employs at least one engineer or architect licensed in at least one state.

[(32)] Installation information--A term used to describe the reports used to inform the department of information needed to perform installation inspections (includes Notice of Installation).

(19) [(33)] Inventory Lender--A person that is involved in extending or arranging for credit in inventory financing secured by manufactured housing.

(20) [(33)] IPIA--The Production Inspection Primary Inspection Agency which evaluates the ability of manufactured home manufacturing plants to follow approved quality control procedures and/or provides ongoing surveillance of the manufacturing process.

[(34)] Lien--A security interest that is created by any kind of lease, conditional sales contract, deed of trust, chattel mortgage, trust receipt, reservation of title or other security agreement of whatever kind or character, if an interest, other than an absolute title, is sought to be held or given in a manufactured home; and any lien on a manufactured home that is created or given by the constitution or a statute.

(21) [(35)] Long-Term Lease--For the purpose of determining whether or not the owner of a manufactured home may elect to treat the home as real property, is a lease on land to which the manufactured home has been attached and which:

(A) has been approved by each lienholder for the manufactured home by placing on file with the Department [department] written consent to have the home treated as real property; or

(B) is for at least five years if the home is not financed.

(22) Loss--Actual financial loss or damage, not including exemplary, punitive, special, or consequential damages.

(23) [(36)] Main frame--A chassis or structure serving a similar purpose [The structural components on which the body of the manufactured home is mounted].

[(37)] Manufactured home--A HUD-Code manufactured home or a mobile home and collectively means and refers to both.

(24) [(38)] Manufactured home identification numbers--For the purpose of maintaining ownership and location [purposes of title] records, including the perfection of liens, the numbers shall include the HUD label number(s) and the serial number(s) imprinted or stamped on the home in accordance with HUD departmental regulations. For homes manufactured prior to June 15, 1976, the Texas seal number, as issued by the Department [department], shall be used instead of the HUD label number. If a home manufactured prior to June 15, 1976, does not have a Texas seal, or if a home manufactured after June 15, 1976, does not have a HUD label, a Texas seal shall be purchased from the Department [department] and attached to the home in upper left corner on tongue end and used for identification in lieu of the HUD label number.

(25) [(39)] Manufactured home site--That area of a lot or tract of land on which a manufactured home is installed.

[(40)] Mobile home--A structure that was constructed before June 15, 1976; transportable in one or more sections; which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length; or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

(26) [(41)] Permanent foundation--A foundation which meets the requirements of §80.54 of this title (relating to Requirements for the Installation of Manufactured Homes) and was constructed according to drawings, as required by that section, which state that the

foundation is a permanent foundation for a manufactured home. [A system of supports and securements, including piers, either partially or entirely below grade which is constructed or certified in accordance with the criteria outlined in §80.52(a) and (b), of this title (relating to Permanent Foundation Performance Criteria).]

[(42) Permanently affixed--Having been anchored to the real estate by attachment to a permanent foundation.]

(25) Promptly--Means within the time prescribed by the Standards Act, these Rules, and any administrative order (including any properly granted extension) or, in the case of a matter that constitutes an imminent threat to health or safety, as quickly as reasonably possible.

[(43) Rebuild--To make a salvaged manufactured home habitable in accordance with §80.66 of this title (relating to Rebuilding or Repairing a "Salvaged" Manufactured Home).]

[(44) Rebuilder--Any person, within the state, who has been licensed by the department to rebuild a salvaged manufactured home, as defined in §1201.461 the Standards Act, in accordance with the rules and regulations of the department.]

[(45) Refurbish--To make a nonhabitable manufactured home or section habitable by repairing, adding, replacing, modifying, or removing components.]

[(46) Serious defect--Any failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part thereof not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to occupants of the affected manufactured home (FMHCSS §3282.7(gg)).]

[(47) Shim--A wedge-shaped piece of cedar, oak, walnut, pecan, gum, ash, hickory, elm, or other comparable hardwood or other accepted material not to exceed one (1) inch vertical (actual) height.]

[(48) Stabilizing components--All components of the anchoring and support system such as piers, footings, ties, anchoring equipment, ground anchors and any other equipment, which supports the manufactured home and secures it to the ground.]

(26) Stabilization system--A combination of the anchoring and support system. It includes, but is not limited to the following components:

(A) Anchoring components--Any component which is attached to the manufactured home and is designed to resist the horizontal and vertical forces imposed on the manufactured home as a result of wind loading. These components include, but are not limited to auger anchors, rock anchors, slab anchors, ground anchors, stabilizing devices, connection bolts, j-hooks, buckles, and split bolts.

(B) Anchoring equipment--Straps, cables, turnbuckles, tubes, and chains, including tensioning devices, which are used with ties to secure a manufactured home to anchoring components or other devices.

(C) Anchoring systems--Combination of ties, anchoring components, and anchoring equipment that will resist overturning and lateral movement of the manufactured home from wind forces.

(D) Diagonal tie--A tie intended to primarily resist horizontal forces, but which may also be used to resist vertical forces.

(E) Footing--That portion of the support system that transmits loads directly to the soil.

(F) Ground anchor--Any device at the manufactured home site designed to transfer manufactured home anchoring loads to the ground.

(G) Longitudinal ties--Designed to prevent lateral movement along the length of the home.

(H) Shim--A wedge-shaped piece of hardwood or other registered component not to exceed one (1) inch vertical (actual) height.

(I) Stabilizing components--All components of the anchoring and support system such as piers, footings, ties, anchoring equipment, ground anchors and any other equipment, which supports the manufactured home and secures it to the ground.

(J) Support system--A combination of footings, piers, caps and shims that support the manufactured home.

(K) Vertical tie--A tie intended primarily to resist the uplifting and overturning forces.

[(49) Standards Act--Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201.]

[(50) Statement of Ownership and Location--means a statement, issued by the Department on the prescribed form, based on a completed application for Statement of Ownership and Location, accompanied by the required fee and all required supporting documentation.]

[(51) Support system--A combination of footings, piers, caps and shims that support the manufactured home.]

[(52) TDHCA--The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department).]

[(53) TMHSA--Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201.]

(27) [(54)] Used home--Any manufactured home (or mobile home) [for] which has been installed and occupied for living [a document of title as previously been issued by an appropriate agency of any state or which has been occupied].

[(55) Vertical tie--A tie intended primarily to resist the uplifting and overturning forces.]

[(56) Wind Zone I--All Texas counties not in Wind Zone II.]

[(57) Wind Zone II--Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, and Willacy counties.]

[(58) Working days--Includes every day on the calendar except Saturday, Sunday, and federal and state holidays.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503141

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 475-2206

◆ ◆ ◆



## SUBCHAPTER C. FEE STRUCTURE

### 10 TAC §80.20

The amended section is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed amended rule.

#### §80.20. Fees.

##### (a) Annual License Fees and Renewal Fees:

- (1) \$425 for each manufacturer's plant license (valid for one year);
  - (2) \$275 for each retailer's sales license (valid for one year);
  - (3) \$275 for each rebuilder's license (valid for one year);
  - (4) \$175 for each broker's license (valid for one year);
  - (5) \$175 for each installer's license (valid for one year);
- and
- (6) \$200 [~~\$100~~] for each salesperson's license (valid for two years).

##### (b) Installation Fees:

- (1) There is a reporting fee of \$100 [~~\$75~~] for the installation of a single section manufactured home and \$25 for each additional section [manufactured home which is not installed on a permanent foundation].

(2) The reporting fee must be submitted to the Department with the completed Notice of Installation (Form T) no later than the 15th day of the month after which the installation is completed. [There is a reporting fee of \$150 for the installation of a manufactured home permanently affixed to real estate or on a permanent foundation.]

~~[(3) Installation fees shall be submitted to the department as follows:]~~

~~[(A) When the installation occurs in conjunction with a title transfer, the fee must be submitted to the department along with the application for title and the Notice of Installation Affidavit; or]~~

~~[(B) For secondary moves (when there is no title transfer), the fee must be submitted to the department along with a completed Notice of Installation Affidavit within ten (10) working days following the installation date.]~~

(3) ~~[(4)]~~ Fee distributions to local governmental entities performing inspection functions pursuant to contract with the Department ~~[department]~~ shall be made in accordance with ~~Department~~ ~~[department]~~ procedures and the provisions of the contract.

~~[(c) Alteration Fee: There is a fee of \$60 per hour or a minimum fee of \$60 for the inspection of alterations made upon the structure, plumbing, heating, or electrical systems of manufactured homes. The fee is paid to the department by the person making the alterations. The person shall also reimburse the department for mileage and per diem incurred by department personnel to and from the place of inspection.]~~

~~[(c) [(d)] Seal Fee: There is a fee of \$35 for the issuance of Texas Seals. Any person who sells, exchanges, lease purchases, or offers for sale, exchange, or lease purchase a used HUD-Code manufactured home manufactured after June 15, 1976, that does not have a HUD label affixed, or a used mobile home manufactured prior to June 15, 1976, that does not have a Texas Seal affixed shall file an application to the Department [department] for a Texas Seal. The application shall be accompanied by the seal fee of \$35 per section made payable to the Department [department].~~

~~[(d) [(e)] Monitoring Fee: There is a fee, as required by HUD, to be paid by each manufacturer in this state for each HUD-Code manufactured home produced. The monitoring inspection fee is established by the secretary of HUD, (pursuant to 24 CFR §3282.307) who shall distribute the fees collected from all manufacturers among the approved and conditionally approved states based on the number of new homes whose first location after leaving the manufacturing plant is on the premises of distributor, retailer, or consumer [purchaser] in that state, and the extent of participation of the state in the joint monitoring program established under the National Manufactured Housing Construction and Safety Standards Act of 1974.~~

~~[(e) [(f)] Homeowner's Temporary Installer's License: There is a fee of \$100 for the issuance of a homeowner's temporary installer's license, which shall also include the cost of the installation inspection. The fee shall be made payable to the Department [department].~~

~~[(f) [(g)] Education Fee: Each attendee at the course of instruction in the law and consumer protection regulations for license applicants shall be assessed a fee of \$250. If a manufacturer requests the training be performed at his or her facility, the manufacturer shall reimburse the Department [department] for the actual costs of the training session (educational fee plus actual cost of travel).~~

~~[(g) Fees for Department-provided Continuing Education: Should the Department chose to offer continuing education, the fee to attend an eight-hour class is \$100.~~

~~[(h) There is a fee of \$300 to process an application for a contract to prepare or administer a certification and continuing education program under §1201.113(c) of the Standards Act.~~

##### ~~[(i) [(h)] Habitability Inspection:~~

~~(1) There is a fee of \$150 for the inspection of a manufactured home which is to be designated for residential use [titled for use as a residence] after having [the title has] been previously designated [canceled] for business use or which is elected as personal property after having been designated as real property [to become real estate]. The purpose of the inspection is to determine if the home is habitable as defined by §1201.453 [§8] of the Standards Act. The fee must accompany a written request for inspection and must be submitted either prior to or in connection with the submission of an Application for Statement of Ownership and Location. [The fee shall accompany a Form A to apply for reinstatement of the title along with those documents set forth in §80.207 of this title (relating to Reinstatement of Canceled Documents of Title). The person requesting the inspection for the use change of a manufactured home shall be charged for mileage and per diem incurred by department personnel traveling to and from the location of the manufactured home. The inspector shall advise the consumer of the charges incurred and no title shall be issued until all fees have been paid.]~~

~~(2) There is a fee of \$200 for the plan review and inspection of a salvaged manufactured home which is to be rebuilt. The purpose of the inspection is to determine if the home is habitable so that it may be designated for residential use. [for reinstatement of the title. The fee shall accompany a written request for the inspection. The rebuilder~~

shall also be charged for mileage and per diem incurred by department personnel traveling to and from the location of the home. See §80.66 of this title (relating to Rebuilding or Repairing a "Salvaged" Manufactured Home): The inspector shall advise the rebuilder of the charges incurred and no title shall be issued until all fees have been paid.]

(A) The fee and required notification shall be submitted in accordance with §80.66 of this title (relating to Rebuilding or Repairing a "Salvaged" Manufactured Home).

(B) The rebuilder shall also be charged for mileage and per diem incurred by Department personnel traveling to and from the location of the home.

(C) The inspector shall advise the rebuilder of the charges incurred, and no Statement of Ownership and Location shall be issued until all fees have been paid.

(j) [(h)] Consumer Complaint Inspection:

(1) There is a fee of \$150 for the initial inspection of a consumer's home in accordance with a consumer complaint when requested by a license holder or party other than a consumer. The fee shall accompany a written request for the inspection.

(2) There is a fee of \$150 for the reinspection of a consumer's home. The fee shall be paid by the party deemed responsible by the Department [department].

(k) [(j)] Fees Relating to Statements of Ownership and Location. Each fee shall accompany the required documents forwarded to the Manufactured Housing Division of the Department at its principal office in Austin. [Titles: Fees relating to titles and title transactions are set forth in §80.202 of this title (relating to Fees for Title Documents).]

(1) A fee of \$55 will be required for the issuance of a Statement of Ownership and Location;

(2) A fee of \$1.50 will be required for certified copies requested other than one certified copy of a Statement of Ownership and Location sent to the owner and one that is sent to the lienholder;

(3) There shall be a fee of \$55 for Quick Processing Service in addition to the \$55 processing fee for each application for Statement of Ownership and Location.

(A) Quick Processing Service shall be defined as the processing of an Application for Statement of Ownership and Location within three (3) business days from the day the complete application is received in the Manufactured Housing Division. The Department will refund the Quick Processing Service fee if the completed application is not processed within the required time.

(B) If an applicant desires Quick Processing, the Quick Processing form provided in §80.260(a)(8) of this title (relating to Required and Optional Forms) must be completed and attached to the front of the application for the application to be deemed complete.

(C) If the Quick Processing form is missing or incomplete or if any other necessary documents or fees are deficient, any delays in processing caused by such will not entitle the payer to a refund of the Quick Processing fee or any other required processing fee.

(D) If Quick Processing is requested but the Quick Processing fee is not paid, the application will receive regular processing.

(E) All Quick Processing applications must be submitted by overnight service or delivered in-person.

(F) If Quick Processing is not completed within three (3) business days, as required, the Quick Processing portion of the fee only will be refunded.

(G) All Statements of Ownership and Location, including Quick Processing items, will be sent via regular mail unless a prepaid overnight envelope is provided.

(4) If a correction of a document is required as a result of a mistake by the Department, the issuance of a new document shall not require a fee. However, if the error was not made by the Department, a request for correction of the error must be made on a completed Application for Statement of Ownership and Location and submitted to the Department along with the required fee of \$55 and any necessary supporting documentation.

(5) When multiple applications are submitted, the Form M provided in §80.260(a)(9) of this title (relating to Required and Optional Forms) must be completed and attached to the front of the applications to identify each application and reconcile the fee for each application with the total amount of the payment. Failure to provide this form, properly completed, will delay the application's being deemed complete for processing.

(l) Method of Payment.

(1) All checks shall be made payable to the Texas Department of Housing and Community Affairs or TDHCA.

(2) All license renewals may also be paid by credit card or ACH, if submitted through Texas Online.

(m) Loss of Check Writing Privileges. Any person who has more than one (1) time paid for anything requiring a fee under these rules with a check that is returned uncollectible, whether "NSF," closed account, refer to maker, or for any similar reason, is required to make all future payments, if any, by means of money order or cashier's check.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503142

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 475-2206

## SUBCHAPTER D. STANDARDS AND REQUIREMENTS

### 10 TAC §§80.53 - 80.58, 80.62, 80.64, 80.66

The new and amended sections are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed new and amended rules.

§80.53. *Requirements for Manufacturer's Designs and Installation Instructions* [Design Requirements].

(a) With each new home, the manufacturer shall provide printed instructions which at a minimum must: [Each new manufactured home shall be designed and constructed as a completely integrated structure capable of sustaining the design load requirements of the FMHCSS and shall be capable of transmitting the loads to anchoring systems without causing an unsafe deformation or an abnormal internal movement of the structure or its structural parts.]

(1) specify the location, orientation and required capacity of stabilizing components on which the design is based;

(2) be filed with the Department;

(3) be approved by the manufacturer's DAPIA; and

(4) contain DAPIA approval stamps, engineer or architect approval stamps, and the installation manual effective date on each page of the installation instructions or on the cover pages of bound installation manuals, unless an equivalent method of authentication is used for electronically filed documents.

(b) If a manufacturer determines that one or more of its homes requires a deviation from the generic standards to protect the structural integrity of the home, the manufacturer must include instructions for the necessary deviation in the manufacturer's DAPIA-approved installation instructions. The manufacturer must provide a copy to the Department along with a letter informing the Department of the required deviation included in the instructions and giving the Department permission to reproduce and release copies of such instructions upon request. On the Department's website, the Department will maintain a current list of all required deviations from generic standards and will provide a copy to anyone who requests it. [Each new manufactured home shall have provisions for anchoring systems which, when properly designed and installed, will resist overturning and lateral movement of the manufactured home up to the respective design loads.]

(c) At least thirty (30) calendar days prior to the effective date of any change, modification, or update to the manufacturer's installation instructions or any appendix, the manufacturer shall file such change, modification, or update with the Department and mail a copy(s) to all the manufacturer's retailers. [The provisions of this section shall be followed and the support and anchoring systems shall be designed by a licensed professional engineer or architect.]

(d) The manufacturer shall file with the Department additional copies of manufacturer's installation instructions for each model in the number specified by the Department. If no number is specified, one copy of each such set of instructions will suffice. [The manufacturer shall design homes to make provisions for the necessary support and anchoring systems; but is not required to provide the anchoring equipment. Printed installation instructions for support and anchoring systems for each model shall be filed with the department as required by the department. When the manufacturer's installation instructions provide for the main frame structure to be used as the point for connection to diagonal ties, no specific connecting devices need to be provided on the frame. Ties shall be designed and installed to prevent self disconnection when the ties are slack. For example, open end hooks shall have set screws or other mechanisms to prevent disconnection when there is slack in the strapping.]

(e) The Department will default to the generic standards, if discrepancies exist in the manufacturer's instructions. [The manufacturer shall provide printed instructions with each new home specifying the location, orientation and required capacity of stabilizing components on which the design is based. The installer must use stabilizing components that have the required capacity and install them according to the anchor or stabilizing component manufacturer's current installation

instructions. When soil auger anchor shafts are not installed in-line with the diagonal frame ties or the combined loads of two ties, approved stabilizer plates, or other approved methods, must be used in accordance with the installation instructions for the soil auger anchors and stabilizer plates. If a difficult soil, such as mixed soil and rock or caliche (heavily weathered limestone) that is not solid rock, exists at the homesite, the installer may install a home in accordance with the generic standards and §80.55(d)(4) of this title (relating to Anchoring Systems).]

{(f) The minimum number of ties required per side shall be sufficient to resist the wind load stated in the FMHCSS §3280.305(e).]

§80.54. Requirements [Standards] for the Installation of Manufactured Homes.

(a) When they are installed, all [AH] manufactured homes shall be installed by a licensed installer to resist overturning and lateral movement of the home, and the installation must be completed in accordance with instructions appropriate for the Wind Zone where the home is to be installed as per one of the following:

(1) the home manufacturer's DAPIA-approved installation instructions;

(2) the state's generic standards set forth in §§80.55, 80.56, 80.57, and 80.58 of this title [this section, §80.55 of this title (relating to Anchoring Systems); §80.56 of this title (relating to Multi-Section Connection Standards); and modified by any appendix filed in accordance with §80.51(a)(2) of this title (relating to Manufactured Home Installation Requirements)];

(3) the instructions for a stabilization system registered with the Department in accordance with §80.62 of this title (relating to Registration of Stabilizing Components and Systems); or [a custom designed stabilization system];

(4) the instructions for a special stabilization system which; [a stabilization system pre-approved by the department; or]

(A) may or may not be a permanent foundation;

(B) is for a particular manufactured home or an identified class of manufactured homes to be installed at a particular area with similar soil properties according to county soil survey or other geotechnical reports; and

(C) is either:

(i) a pre-existing foundation for which a professional engineer or architect licensed in Texas has issued written approval for the installation of a particular home, and the written approval shall be submitted to the Department with the installation report; or

(ii) installed in accordance with a custom designed stabilization system drawing that is stamped by a Texas licensed professional engineer or architect. A copy of the stabilization system drawing must be forwarded to the Department along with the installation report.

{(5) on a permanent foundation.}

(b) When a home is installed on a stabilization system registered with the Department or a special stabilization system, the installer must follow the home manufacturer's DAPIA-approved installation instructions for any aspect of the installation that is not covered by the system's installation instructions or drawings.

(c) The installer must use stabilizing components that have the required capacity and install them according to the anchor or stabilizing

component manufacturer's current installation instructions. All stabilizing components must be resistant to all effects of weathering including that encountered along the Texas gulf coast. Nonconcrete stabilizing components and systems for use within 1500 feet of the coastline shall be specifically certified for this use. Preservation treated (PT) wood components shall conform to the applicable standards issued by the American Wood Preserver's Association and referenced by the latest edition of the International Residential Code.

(d) [(b)] Site Preparation Responsibilities and Requirements:

(1) A consumer acquiring [The purchaser of] a manufactured home to be installed, new or used, is responsible for the proper preparation of the site where the manufactured home will be installed except as set forth in §80.57 of this title (relating to Generic Standards for Moisture and Ground Vapor Controls) [subsection (g) of this section]:

[(A) In the case of a manufactured home that is to be installed in a manufactured home rental community (as defined in Local Government Code §232.007), the purchaser may not have the ability to control the preparation of the site. Therefore, the purchaser should confirm with the person who owns, leases, or manages the rental community that the site has been properly prepared as required by Property Code, §94.151.]

[(B) When a manufactured home is sold already installed it is not possible for the purchaser to prepare the site. Therefore, it is the responsibility of the seller, if the seller is a licensed retailer, to ensure that the site has been properly prepared.]

(2) Whenever a licensed retailer intends to sell a manufactured home, regardless of where it is located or is to be located, the retailer is required to give the consumer [proposed purchaser] the Site Preparation Notice, for signature by the consumer, in the form set forth in §80.260(a)(1) of this title (relating to Required and Optional Forms) [subsection (g) of this section] PRIOR to the execution of any binding sales agreement.

(3) Whenever a licensed installer proposes to move a used manufactured home, the installer is required to give the consumer [proposed purchaser] the Site Preparation Notice, for signature by the consumer, in the form set forth in §80.260(a)(1) of this title (relating to Required and Optional Forms) [subsection (g) of this section] PRIOR to entering into a binding agreement to move that home.

(4) If home is sold in place, already installed, see §80.260(a)(11) of this title.

(e) [(e)] If at the time of installation the retailer or installer provides the materials for skirting or contracts for the installation of skirting, the retailer or installer is responsible for installing [the following: The retailer or installer shall install] any required moisture and ground vapor control measures in accordance with the home installation instructions, specifications of a registered [an approved] stabilization system, or the generic standards and shall provide for the proper cross ventilation of the crawl space. If the consumer [purchaser or homeowner] contracts with a person other than the retailer or installer for the skirting, the consumer [purchaser or homeowner] is responsible for installing the moisture and ground vapor control measures and for providing for the proper cross ventilation of the crawl space.

(f) [(d)] Clearance: If the manufactured home is installed according to the state's generic standards, a minimum clearance of 18 inches between the ground and the bottom of the floor joists must be maintained. In addition, the installer shall be responsible for installing the home with sufficient clearance between the I-Beams and the ground so that after the crossover duct prescribed by the manufacturer is properly installed it will not be in contact with the ground. Refer to §80.56

of this title (relating to Generic Standards for Multi-Section Connections [Connection] Standards) for additional requirements for utility connections. It is strongly recommended that the installer not install the home unless all debris, sod, tree stumps and other organic materials are removed from all areas where footings are to be located.

(g) [(e)] Drainage: The consumer [purchaser] is responsible for proper site drainage where the manufactured home (new or used) is to be installed unless the home is installed in a rental community. It is strongly recommended that the installer not install the home unless the exterior grade is sloped away from the home or another generally accepted [approved] method to prohibit surface runoff from draining under the home is provided. Drainage prevents water build-up under the home. Water build-up may cause shifting or settling of the foundation, dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors.

[(f) Generic Moisture and Ground Vapor Controls:]

[(1) If the manufactured home is installed according to the state's generic standards and the space under the home is to be enclosed with skirting and/or other materials provided by the retailer and/or installer, an access opening not less than 18 inches in any dimension and not less than three square feet in area shall be provided by the installer. The access opening shall be located so that any water supply and sewer drain connections located under the home are accessible for inspections. If a clothes dryer exhaust duct, air conditioning condensation drain, or combustion air inlet is present, the installer must pass it through the skirting to the outside. In addition, crawl space ventilation must be provided at the rate of minimum 1 square foot of net free area, for every 150 square feet of floor area. At least six openings shall be provided, one at each end of the home and two on each side of the home. The openings shall be screened or otherwise covered to prevent entrance of rodents (note: screening will reduce net free area). For example, a 16'-x-76' single section home has 1216 square feet of floor area. This 1216 square feet divided by 150 equals 8.1 square feet or 1166 square inches of net free area crawl space ventilation.]

[(2) The retailer and/or installer must notify the purchaser that moisture and ground vapor control measures are required if the space under the home is to be enclosed. Water vapor build-up may cause dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors. The generic ground vapor control measure shall consist of a ground vapor retarder that is minimum 6 mil polyethylene sheeting or its equivalent, installed so that the area under the home is covered with sheeting and overlapped approximately 12 inches at all joints. Any tear larger than 18 inches long or wide must be taped using a material appropriate for the sheeting used. The laps should be weighted down to prevent movement. Any small tears and/or voids around construction (footings, anchor heads, etc.) are acceptable.]

[(g) Notice: The site preparation notice to be given to the consumer shall be as follows:]  
[Figure: 10 TAC §80.54(g)]

[(h) Footers and Piers:]

[(1) Proper sizing of footings depends on the load carrying capacity of both the piers and the soil. To determine the load bearing capacity of the soil, the installer may use any of the following methods:]

[(A) Pocket penetrometer:]

[(i) Test a typical area adjacent to or within 10 feet of the perimeter of the unit:]

{{ii}} Dig down to undisturbed soil. This should be a minimum of 1 square foot surface area; and]

{{iii}} Using the pocket penetrometer take seven (7) readings; eliminate the highest and the lowest and average the remaining five (5).]

{{B}} Soil surveys from the U.S. Department of Agriculture;]

{{C}} Values from tables of allowable or presumptive bearing capacities given in local building codes. Such tables are commonly available from the local authority having jurisdiction; or]

{{D}} Any other test data from soil analysis reports.}]

{{2}} The footing must be placed on firm, undisturbed soil, or fill compacted to at least 90% of its maximum relative density. Installation on loose, noncompacted fill may invalidate the home's limited warranty.}]

{{3}} Footer configurations:}]  
[Figure: 10 TAC §80.54(h)(3)]

{{4}} Footer sizing and capacities: The following tables represent maximum loads and spacings based on footer size and soil bearing capacity. Other approved footers may be used if equal or greater in bearing area than those footer sizes tabulated. }  
[Figure: 10 TAC §80.54(h)(4)]

{{5}} Piers and pier spacings: One of the most important parts of home installation is proper pier installation. Incorrect size, location or spacing of piers may cause serious structural damage to the home. Spacing and location of piers shall be in accordance with the tables listed in these standards (Table 3B; without perimeter piers; Table 3C; with perimeter piers).}]

{{A}} Spacing shall be as even as practicable along each main I-Beam. Pier spacing may exceed tabulated values up to 30% so long as the total pier count remains the same. End piers are to be located within 24 inches of the end of the main frame.}]

{{B}} Piers shall extend at least 6 inches from the centerline of the I-Beam or be designed to prevent dislodgment due to horizontal movement of less than 4 inches.}]

{{C}} Load bearing supports or devices shall be listed by an independent testing laboratory, nationally recognized inspection agency, or other nationally recognized organization and approved by the department. Engineers or architects licensed in Texas may design load bearing supports or devices for a single installation. A copy of the design for this particular home and site shall be provided to the department before the home is installed; but department approval is not required.}]

{{D}} Sidewall openings greater than 4 feet shall have perimeter piers located under each side of the opening, i.e. patio doors, recessed porches/entries, bay windows and porch posts. Perimeter piers for openings are not required for endwalls.}]

{{6}} Pier design: Piers shall be constructed per the following details:}]  
[Figure: 10 TAC §80.54(h)(6)]

{{A}} Shimming (if needed): Hardwood shims are commonly used as a means for leveling the home and filling any voids left between the bottom flange of the I-Beam and the top of the pier cap. Wedge shaped shims must be installed from both sides of the I-Beam to provide a level bearing surface. The allowable height must not exceed 1 inch. Shims shall be a minimum of 3 inches wide and 6 inches long. Over shimming should be avoided.}]

{{B}} Table 3B - Pier loads (pounds) at tabulated spacings WITHOUT perimeter supports:}]  
[Figure: 10 TAC §80.54(h)(6)(B)]

{{C}} Table 3C - Pier loads (pounds) at tabulated spacings WITH perimeter supports:}]  
[Figure: 10 TAC §80.54(h)(6)(C)]

{{7}} Typical multi-section pier layout:}]  
[Figure: 10 TAC §80.54(h)(7)]

{{8}} Typical single section pier layout:}]  
[Figure: 10 TAC §80.54(h)(8)]

{{9}} Multi-section units mating line column supports:}]

{{A}} On multi-section units, openings larger than 4 feet must have piers installed at each end of the opening. To determine the pier loads, refer to Table 3D in subparagraph (D) of this paragraph.}]  
[Figure: 10 TAC §80.54(h)(9)(A)]

{{B}} Column loads for each section may be combined when the columns are opposite each other. The footer must be sized for the combined loading.}]

{{C}} Additional piers are required under marriage walls (see wall between column #3 and #4 in the Marriage Line Elevation drawing in subparagraph (A) of this paragraph). The maximum spacing is the same as the spacing at the main I-Beams, without perimeter piers, and one half the spacing of the perimeter piers, with perimeter piers installed.}]

{{D}} Table 3D: Mating line column loads (pounds).}]  
[Figure: 10 TAC §80.54(h)(9)(D)]

#### §80.55. *Generic Standards for Anchoring Systems.*

(a) General Requirements: For units built on or after September 1, 1997, the installer must verify that the unit is designed for the Wind Zone in which it is to be installed and must follow all applicable installation instructions for that Wind Zone as set forth herein. See figure in §80.240(b)(1) of this title for counties located in Wind Zone II. Note: A Wind Zone I unit, built on or after September 1, 1997, may not be installed in a Wind Zone II area. However, a Wind Zone II unit may be installed in a Wind Zone I area.  
[Figure: 10 TAC §80.55(a)]

#### (b) Material Specifications:

(1) Strapping shall be Type 1, Finish B, Grade 1 steel strapping, 1.25 inches wide and 0.035 inches in thickness, certified by a licensed professional engineer or architect as conforming with the American Society for Testing and Materials (ASTM) Standard Specification D3953 91, Standard Specification for Strapping, Flat Steel, and Seals. [Tie materials shall be capable of resisting an allowable working load of 3,150 pounds with no more than 2% elongating and shall withstand a 50% overload (4,725 pounds total). Ties shall have a resistance to weather deterioration at least equivalent to that provided by coating of zinc on steel of not less than 0.30 ounces per square foot on each side of the surface coated (0.0005 inches thick); as determined by ASTM Standards Methods of Test for Weight of Coating on Zinc-coated (galvanized) Iron or Steel Articles (ASTM A 90-81). Slit or cut edges of zinc-coated steel strapping are not required to be zinc coated.}] Strapping shall be marked at least every five feet with the marking described by the certifying engineer or architect.

(2) Tie materials shall be capable of resisting an allowable working load of 3,150 pounds with no more than 2% elongation and shall withstand a 50% overload (4,725 pounds total). Ties shall have a resistance to weather deterioration at least equivalent to that provided by coating of zinc on steel of not less than 0.30 ounces per square

foot on each side of the surface coated (0.0005 inches thick), as determined by ASTM Standards Methods of Test for Weight of Coating on Zinc-coated (galvanized) Iron or Steel Articles (ASTM A 90-81). Slit or cut edges of zinc-coated steel strapping are not required to be zinc coated. Ties shall be designed and installed to prevent self disconnection when the ties are slack. For example, open end hooks shall have set screws or other mechanisms to prevent disconnection when there is slack in the strapping. [All anchoring components must be approved by the department. Installers shall only use approved anchoring components. An installer may obtain a list of approved anchoring components from the department, anchor manufacturer and/or supplier of anchoring components.]

(3) Anchor spacing ONLY applies to units with roof pitch of 20 degrees or less. For anything over 20 degrees, it must be designed by a professional engineer or architect.

(c) Anchors shall be installed per the figures in §80.240(b)(2) and (3) of this title. [following details:]

(1) in direction of load, see the Anchor Installation figure in §80.240(b)(2) of this title.  
[Figure: 40 TAC §80.55(e)(1)]

(2) installed against direction of load (vertical and/or angled), a stabilizer plate must be installed. See Placement of Stabilizing Devices figure in §80.240(b)(3) of this title.  
[Figure: 40 TAC §80.55(e)(2)]

(d) WIND ZONE I Installation:

(1) See the Wind Zone I Installation figure in §80.240(b)(4) of this title for the typical [Typical] anchor layout, single and multi-section units (WIND ZONE I ONLY).  
[Figure: 40 TAC §80.55(d)(1)]

(2) [Table 4A:] The [following] table in §80.240(a)(1) of this title describes the maximum spacing for diagonal ties along each side of the unit.  
[Figure: 40 TAC §80.55(d)(2)]

(3) The table in §80.240(a)(2) of this title describes the minimum [Table 4B: Minimum] number of diagonal ties required per side, per unit length. Table based on 2 feet inset of anchors at each end.  
[Figure: 40 TAC §80.55(d)(3)]

(4) When [approved] auger anchors cannot be inserted into a difficult soil after moistening, such as mixed soil and rock or caliche (heavily weathered limestone) that is not solid rock, [approved] cross drive rock anchors may be used in accordance with the values and notes for the table in §80.240(a)(1) of this title [Table 4A in paragraph (2) of this subsection] modified as follows:

(A) Since the ultimate anchor pull out in the difficult soil will be reduced, the maximum spacing for diagonal ties per side is one half the spacing allowed by the table in §80.240(a)(1) of this title [Table 4A] which will require adding one additional cross drive rock anchor for each anchor specified for the sides and ends;

(B) The rods of the [approved] cross drive rock anchors must be fully inserted, have at least 24 inches of the rod lengths embedded in the difficult soil, and be restrained from horizontal movement[; when feasible,] by a stabilizer device [plate] between the rods and the home; and

(C) Each cross drive rock anchor is connected to one diagonal tie and is not connected to a vertical tie.

(e) WIND ZONE II Installation:

(1) In place of the requirements as shown in subsection (d) of this section, units designed for Wind Zone I and built prior to September 1, 1997, and units designed for Wind Zone II and built prior to July 13, 1994, require diagonal ties as set forth in the table in §80.240(a)(3) of this title [Table 5A] when these units are installed in Wind Zone II. See also §1201.256 of the Standards Act [§80.50 of this title (relating to Wind Zone Regulations)]. Items not specifically addressed in this section are the same as for Wind Zone I installations.  
[Figure: 40 TAC §80.55(e)(1)]

(2) Units built to Wind Zone II on or after July 13, 1994.

(A) Units built to Wind Zone II on or after July 13, 1994, should have either built-in, or provisions for connecting, vertical ties along the sidewall(s) of each unit(s). A diagonal tie must be installed at each vertical tie location (except for designated shearwall tie). Built-in vertical ties shall be connected to anchors. If there are brackets or other provisions for connecting vertical ties, vertical ties shall be added at the brackets or provisions and connected to anchors.

(B) Only factory installed vertical ties may be closer than 4 feet from each other.

(C) Where tie locations are clearly marked as a shear wall strap, a perimeter pier must be installed at that location. [See subsection §80.54(d) of this title (relating to Standards for the Installation of Manufactured Homes) for perimeter pier construction.] Diagonal tie is not required.

(D) Where the vertical tie spacing exceeds 8'-0" on-center (see also note 6 in the table in §80.240(a)(3) of this title [table 5A] for exception), the anchoring system must be approved by the home manufacturer's installation manual, or designed by a professional engineer or architect licensed in the state of Texas.

(E) Where pier heights exceed 36 inches in height, the diagonal strap shall be connected to the opposite I-Beam. See the Diagonal Strap Placement for Piers Exceeding 36 inches in Height figure in §80.240(b)(5) of this title. [(see Figure 4-)]  
[Figure: 40 TAC §80.55(e)(2)(E)]

(F) Where vertical tie locations are not easily discernable, the vertical ties may be connected to the main I-Beam rails and the anchor installed directly below that connection point. The diagonal tie must be connected to the opposite main I-Beam. In no case shall the distance between those ties exceed 5'-4" on-center. See the Diagonal and Vertical Ties figure in §80.240(b)(6) of this title. [(see Figure 2-)]  
[Figure: 40 TAC §80.55(e)(2)(F)]

(3) Multi-section centerline anchoring requirements (Wind Zone II only):

(A) Centerline anchor ties are required for ALL Wind Zone II installations, regardless of the date the unit was manufactured, when installation occurs on or after the effective date of these rules.

(B) Factory installed centerline vertical ties, brackets, buckles or any other connecting devices must be connected to a ground anchor. No additional anchors as described in subparagraph (D) of this paragraph are required.

(C) To avoid obstructions and/or piers and footers, the anchor may be offset up to 12 inches perpendicular to the centerline.

(D) Where factory preparations do not exist, install anchors and angle iron brackets at each side of mating line openings wider than 48 inches per the table in §80.240(a)(4) of this title [table 5B (see Figure 5B for detail)]. See the Typical Installation Details figure in §80.240(b)(7) of this title for detail.

(i) Where equal spans exist opposite each other (*i.e.* [i.e.], each section), a double bracket assembly may be used. The maximum opening is per the table in §80.240(a)(4) of this title [table 5B]. Total uplift load may not exceed the anchor and/or strap capacity (*i.e.* [i.e.], 3150 pounds).

(ii) The angle iron bracket is minimum 11 gauge. The holes for the lag screws are a maximum of 4 inches apart.

(iii) Lag screws/bolts are minimum 5/16 x 3 inches, full thread.

(4) For openings separated by a wall or post 16 inches or less in width, the opening span is the total of the spans on each side of the wall/post.

(f) Bracket Installation.

(1) See the table in §80.240(a)(4) of this title concerning the maximum centerline [Table 5B: Maximum Centerline] wall opening for column uplift brackets (see §80.240(b)(7) of this title [figure 5B] for typical installation details). [Figure: 10 TAC §80.55(f)(1)]

(2) Section §80.240(b)(7) of this title [Figure 5B] shows both single and double bracket assemblies for illustration purposes only. Use a single bracket for openings which exist on one section only. Use double bracket where openings are opposite each other on two sections of the home.

(3) When only one bracket assembly is required, it may be installed on either side of the column/opening stud(s), but no more than 12 inches from the column or opening stud(s). See the Anchor Span figure in §80.240(b)(8) of this title for examples. [(See examples in figure 5C:)]

(4) When two bracket assemblies are required, they must be installed on each side of the column/opening stud(s), but no more than 12 inches from the column/opening stud(s) [(see examples in figure 5C)], and they must be angled away from each other a minimum of 12 inches. See the Anchor Span figure in §80.240(b)(8) of this title for examples.

[Figure: 10 TAC §80.55(f)(4)]

(5) Example: A double section unit with each section being 14 feet wide;

(A) Span "A" is 18'-0", matching span both sections;

(B) Span "B" is 14'-8", matching span both sections;

(C) Span "C" is 6'-8", matching span both sections; and

(D) Span "D" is 13'-4", one side only. (See the Anchor Span figure in §80.240(b)(8) of this title.) [Figure: 10 TAC §80.55(f)(5)(D)]

(6) Longitudinal ties (see figures in §80.240(b)(9) and (10) of this title):

(A) Longitudinal ties are required for ALL wind zone installations, regardless of the date of manufacture, when installation occurs after the effective date of these rules.

(B) Longitudinal ties are designed to prevent lateral movement along the length of the home.

(C) When conventional anchors and straps are used, install the required number of ties per the table in §80.240(a)(1) of this title [Table 4A] or the table in §80.240(a)(3) of this title [Table 5A] as appropriate. The strap(s) may be connected or wrapped around front or rear chassis header members, around existing cross members or spring

hangers. A strap must be within 3 inches of where the cross member attaches to the main I-beam. Alternatively, brackets to receive the strap(s) may be attached [welded] to the bottom flange of the main I-beams. The location of the connection points along the length of the I-beams are not critical, as long as the number of longitudinal ties required for each end of each home section are installed with their pull in opposite directions. No two anchors shall be within 4 ft of each other. No two ties shall be attached to the same structural member of the home, other than a main longitudinal frame member or a front or rear chassis header member.

(D) Anchors require stabilizer plates when the anchor shaft is not in line with strap (plus or minus 10 degrees).

[Figure: 10 TAC §80.55(f)(6)(D)]

§80.56. Generic Standards for Multi-Section Connections [~~Connection~~] Standards.

(a) Air infiltration and water vapor migration at mating surfaces: Before positioning additional sections, the mating line surfaces along the floor, endwall and ceiling, require material or procedures to limit air infiltration and water vapor migration. See the Mating Line Surfaces figure in §80.240(b)(11) of this title. The following are acceptable materials and/or procedures:

(1) Expanding Foam: Foam may be used along surfaces that are accessible after the units have been joined. Where mating line walls line up between sections, non-porous materials must be installed prior to joining the units.

(2) Caulking: Caulking may be used along surfaces that are accessible after the units have been joined. Where mating line walls line up between sections, non-porous materials must be installed prior to joining the units.

(3) Non-porous gasket installed along the perimeter of all mating lines.

(4) Insulation, carpet, carpet pad or other porous materials are not acceptable.

[Figure: 10 TAC §80.56(a)(4)]

(b) Floor Connections:

(1) Gaps between floors up to 1-1/2 inches maximum which do not extend the full length of the floor may be filled with lumber, plywood or other suitable shimming materials. Fastener lengths in shimmed areas may need to be increased to provide minimum 1-1/4 inches penetration into opposite floor rim joist.

(2) Gaps less than 1/2 inch width need not be shimmed.

(3) The floor assemblies of multi-section units must be fastened together. Fastener options and maximum spacings are listed in the floor connections table in §80.240(a)(5) of this title [table 6A in paragraph (5) of this subsection].

(4) Any tears or damages to the bottom board due to fastener installation must be repaired.

(5) See the floor connections table in §80.240(a)(5) and the figure in §80.240(b)(12) of this title. [Table 6A: Floor connections - Wind Zone I and II:]

[Figure: 10 TAC §80.56(b)(5)]

(c) Endwall Connections (see the figure in §80.240(b)(13) of this title):

(1) Endwalls must be fastened together at the mating line with minimum #8x4 inch wood screws or 16d nails at maximum 8 inches on-center or 12 inches on-center maximum for 5/16 lags; toed or driven straight; and

(2) Fastener length may need to be adjusted for gaps and/or toeing, to provide minimum 1-1/2 inch penetration into opposite end-wall stud.

[Figure: 40 TAC §80.56(e)(2)]

(d) Roof Connection: (Note: Fasteners must not be used to pull the sections together.)

(1) Roof shall be connected with the fasteners and spacings specified in the table in §80.240(a)(6) of this title [Table 56(d)(3)].

(2) Gaps between the roof sections (at ridge beam and/or open beam ledgers) of up to 1-1/2 inches wide maximum which do not extend the full length of the roof must be filled with lumber and/or plywood shims. Gaps up to 1/2 inch need not be shimmed. The fastener length used in the shimmed area may need to be increased to provide a minimum 1-1/4 inch penetration into the adjacent roof structural member.

(3) See the roof connections table in §80.240(a)(6) of this title. [Table 56(d)(3): Roof Connection - Fastener type and spacing:] [Figure: 40 TAC §80.56(d)(3)]

(4) See the Roof Connection figure in §80.240(b)(14) of this title. [Figure 56(d)(4):] [Figure: 40 TAC §80.56(d)(4)]

(e) Exterior Roof Close Up (see the figure in §80.240(b)(15) of this title):

(1) Ensure that shingles are installed to edge of roof decking at peak. Follow nailing instructions on the shingle wrapper. Note: Wind Zone II (high wind) installations require additional fasteners.

(2) Before installing ridge cap shingles, a minimum 6 inch wide piece of 30 gauge galvanized flashing must be installed the length of the roof.

(3) When flashing is not continuous, lap individual pieces a minimum of 6 inches.

(4) Fasten flashing into roof sheathing with minimum 16 gauge staples with 1 inch crown or roofing nails of sufficient length to penetrate roof decking. Maximum fastener spacing is 6 inches on-center each roof section. Place fasteners a minimum of 3/4 inches along edge of flashing.

(5) Install ridge shingles directly on top of flashing.

(6) Check remainder of roof for any damaged or loose shingles, remove any shipping plastic or netting, wind deflectors, etc. Make sure to seal any fastener holes with roofing cement.

[Figure: 40 TAC §80.56(e)(6)]

(f) Exterior Endwall Close Up: Cut closure material to the shape and size required and secure in place, starting from the bottom up, *i.e.* [i.e.]: bottom starter, vertical or horizontal siding, then roof overhang, soffit and fascia. All closure material should be fitted and sealed as required to protect the structure or interior from the elements.

(g) HVAC (heat/cooling) Duct Crossover (see the figure in §80.240(b)(16) of this title):

(1) Crossover duct must be listed for EXTERIOR use.

(2) Duct R-value shall be a minimum of R-4.

(3) The duct must be supported 48 inches on-center (maximum) and must not be allowed to touch the ground. Either strapping (minimum 1 inch wide), to hang the duct from the floor, or non-continuous pads to support it off the ground are acceptable.

(4) The duct to the collar or plenum connections must be secured with bands or straps designed [approved] for such use. Keep duct as straight as possible to avoid kinks or bends that may restrict the airflow. Extra length must be cut off.

[Figure: 40 TAC §80.56(g)(4)]

(h) Multi-Section Water Crossover Connection (see figure in §80.240(b)(17) of this title [(multi-sections only)]:

(1) If there is water service to other sections, connect the water supply crossover lines as shown in the applicable detail.

[Figure: 40 TAC §80.56(h)(1)]

(2) If the water crossover connection is not within the insulated floor envelopes, wrap the exposed water lines in insulation and secure with a good pressure sensitive tape or nonabrasive strap, or enclose the exposed portion with an insulated box.

(3) If water piping at the inlet is exposed, a heat tape should be installed to prevent freezing. A heat tape receptacle has been provided near the water inlet. When purchasing a heat tape, it must be listed for manufactured home use, and it must be installed per manufacturer's instructions.

(i) Drain, Waste and Vent System (DWV):

(1) Portions of the DWV system which are below the floor may not have been installed, to prevent damage to the piping during transport. Typically, the DWV layout is designed to terminate at a single connection point to connect to the on-site sewer system. For a new home where on-site DWV connections are not assembled per the manufacturer's instructions, the DWV system must be assembled in accordance with Part 3280 of the FMHCSS. See the Drain, Waste and Vent Floor Piping System figure in §80.240(b)(18) of this title.

(2) The following guidelines apply:

(A) All portions of the DWV system shall be installed to provide a minimum of 1/4 inch slope per foot, in the direction of the flow.

(B) Changes in direction from vertical to horizontal, and horizontal to horizontal, shall be made using long sweep elbows and/or tees.

(C) All drain piping shall be supported at intervals not to exceed 4 feet on-center. The support may be either blocking or strapping. When strapping is used, it should be nonabrasive.

(D) Piping must be assembled with the appropriate cleaners, primers and solvents (note: both ABS and PVC systems are common, but require different adhesives). Be sure to follow the instructions of the product used.

(E) A cleanout must be installed at the upper (most remote) end of the floor piping system (see diagrams in the Drain, Waste and Vent Floor Piping System figure in §80.240(b)(18) of this title [sub-paragraph (F) in this paragraph]).

[(F) Typical details:]

[Figure: 40 TAC §80.56(i)(2)(F)]

(j) Electrical Connections: Depending on the model and/or manufacturer of the home, electrical crossovers may be located in either the front end and/or rear end of the home. Check along mating line for other labeled access panels.

(1) Crossover connections may be one of the following:

(A) [approved] snap or plug-in type;

(B) junction boxes inside floor cavity (note: crossover wiring routed outside the floor cavity must be enclosed in conduit). If



the boxes and/or covers are metal, they must be grounded by the use of the ground wire; or

(C) pigtail between receptacles/switches between sections (one circuit only).

(2) Chassis Bonding: Each chassis shall be bonded to the adjacent chassis with a solid or stranded, green insulated or bare, number 8 copper conductor. The conductor is connected to the steel chassis with a solderless lug. See the Chassis Bonding figure in §80.240(b)(19) of this title. Alternate bonding: A 4 inch wide by 30 gauge continuous metal strap may be used as an alternate, when attached to the chassis members with two #8x 3/4 inch self tapping metal screws each end of the strap.

[Figure: 10 TAC §80.56(j)(2)]

(3) See the Electrical Crossover figure in §80.240(b)(20) of this title for typical crossover details.[:]

[Figure: 10 TAC §80.56(j)(3)]

(4) Shipped loose equipment:

(A) Electrical equipment such as ceiling fans, chandeliers, exterior lights, etc., which may have been shipped loose, must be installed in accordance with the adopted National Electric Code (NEC). Connect all corresponding color coded or otherwise marked conductors per the applicable sections of the NEC.

(B) Bonding strap removal: 240 volt appliances (range, dryer, etc.) shall have the bonding strap removed between the ground and the neutral conductors. Cords used to connect those appliances shall be four conductor, four prong.

(5) Electrical testing: At the time of installation, the following tests must be performed:

(A) All site installed or shipped loose fixtures shall be subjected to a polarity test to determine that the connections have been properly made.

(B) All grounding and bonding conductors installed or connected during the home installation shall be tested for continuity, and

(C) All electrical lights, equipment, ground fault circuit interrupters and appliances shall be subjected to an operational test to demonstrate that all equipment is connected and functioning properly.

(6) Main panel box feeder connection: The main panel box is wired with the grounding system separated from the neutral system (4-wire feeder). The grounding bus in the panel must be connected through a properly sized green colored insulated conductor to the service entrance equipment (meter base) located on or adjacent to the home. Refer to the [following] table in §80.240(a)(7) of this title for proper feeder conductor sizes.

[Figure: 10 TAC §80.56(j)(6)]

(k) Fuel Gas Piping Systems:

(1) Crossover Connections: All underfloor fuel gas pipe crossover connections shall be accessible and be made with the connectors supplied by the home manufacturer, or, if not available, with flexible connectors listed for exterior use and a listed quick disconnect (Method A), or a shut-off valve (Method B). When shut-off valve is used, it must be installed on the supply side of the gas piping system. The crossover connector must have a capacity rating (BTUH) of at least the total BTUH's of all appliances it serves.

(2) Testing: The fuel gas piping system shall be subjected to an air pressure test of no less than 6 ounces and no more than 8

ounces. While the gas piping system is pressurized with air, the appliance and crossover connections shall be tested for leakage with soapy water or bubble solution. This test is required of the person connecting the gas supply to the home, but may also be performed by the gas utility or supply company. See the Fuel Gas Pipe Crossover Connections figure in §80.240(b)(21) of this title.

[Figure: 10 TAC §80.56(k)(2)]

§80.57. Generic Standards for Moisture and Ground Vapor Controls.

(a) If the manufactured home is installed according to the state's generic standards and the space under the home is to be enclosed with skirting and/or other materials provided by the retailer and/or installer, the enclosure must meet the following requirements:

(1) At least one access opening that does not require the use of tools to gain access shall not be less than 18 inches in any dimension and not less than three square feet in area shall be provided by the installer. The access opening shall be located so that any water supply and sewer drain connections located under the home are accessible for inspections.

(2) If a clothes dryer exhaust duct, air conditioning condensation drain, or combustion air inlet is present, the installer must pass it through the skirting to the outside.

(3) Crawl space ventilation must be provided at the rate of minimum 1 square foot of net free area, for every 150 square feet of floor area.

(4) At least six openings shall be provided, one at each end of the home and two on each side of the home. The openings shall be screened or otherwise covered to prevent entrance of rodents (note: screening will reduce net free area). For example, a 16'x76' single section home has 1216 square feet of floor area. This 1216 square feet divided by 150 equals 8.1 square feet or 1166 square inches of net free area crawl space ventilation.

(b) The retailer and/or installer must notify the consumer that moisture and ground vapor control measures are required if the space under the home is to be enclosed. Water vapor build-up may cause dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors. The generic ground vapor control measure shall consist of a ground vapor retarder that is minimum 6 mil polyethylene sheeting or its equivalent, installed so that the area under the home is covered with sheeting and overlapped approximately 12 inches at all joints. Any tear larger than 18 inches long or wide must be taped using a material appropriate for the sheeting used. The laps should be weighted down to prevent movement. Any small tears and/or voids around construction (footings, anchor heads, etc.) are acceptable.

(c) Notice: The Site Preparation Notice form to be given to the consumer is in §80.260(a)(1) of this title.

§80.58. Generic Standards for Footers and Piers.

(a) Proper sizing of footings depends on the load carrying capacity of both the piers and the soil. To determine the load bearing capacity of the soil, the installer may use any of the following methods:

(1) Pocket penetrometer:

(A) Test a typical area adjacent to or within 10 feet of the perimeter of the unit;

(B) Dig down to undisturbed soil. Each hole should be a minimum of 1 square foot surface area; and

(C) Using the pocket penetrometer take seven (7) readings, eliminate the highest and the lowest and average the remaining five (5).

(2) Soil surveys from the U.S. Department of Agriculture;

(3) Values from tables of allowable or presumptive bearing capacities given in local building codes. Such tables are commonly available from the local authority having jurisdiction; or

(4) Any other test data from soil analysis reports.

(b) The footing must be placed on firm, undisturbed soil, or fill compacted to at least 90% of its maximum relative density. Installation on loose, noncompacted fill may invalidate the home's limited warranty.

(c) See the Footer Configurations figure in §80.240(b)(22) of this title.

(d) Footer sizing and capacities: The Footer Capacities table in §80.240(a)(8) of this title represent maximum loads and spacings based on footer size and soil bearing capacity. Other footers may be used if equal or greater in bearing area than those footer sizes tabulated.

(e) Piers and pier spacings: Spacing and location of piers shall be in accordance with the tables listed in §80.240(a)(9) and (10) of this title.

(1) Spacing shall be as even as practicable avoiding obstacles that are not in control of the installer along each main I-Beam. Pier spacing may exceed tabulated values up to 30% so long as the total pier count remains the same. End piers are to be located within 24 inches of the end of the main frame.

(2) Piers shall extend at least 6 inches from the centerline of the I-Beam or be designed to prevent dislodgment due to horizontal movement of less than 4 inches.

(3) Load bearing supports or devices shall be registered with the Department in accordance with §80.62 of this title (relating to Registration of Stabilizing Components and Systems).

(4) Sidewall openings greater than 4 feet shall have perimeter piers located under each side of the opening, i.e., patio doors, recessed porches/entries, bay windows and porch posts. Perimeter piers for openings are not required for endwalls.

(f) Pier design: Piers shall be constructed per the details in the Pier Design figure in §80.240(b)(23) of this title.

(1) Shimming (if needed): Shims are commonly used as a means for leveling the home and filling any voids left between the bottom flange of the I-Beam and the top of the pier cap. Wedge shaped shims must be installed from both sides of the I-Beam to provide a level bearing surface. The allowable height must not exceed 1 inch. Shims shall be a minimum of 3 inches wide and 6 inches long.

(2) See the table in §80.240(a)(9) of this title for the pier loads (pounds) at tabulated spacings WITHOUT perimeter supports.

(3) See the table in §80.240(a)(10) of this title for pier loads (pounds) at tabulated spacings WITH perimeter supports and the Perimeter Pier Front and Side View figure in §80.240(b)(24) of this title.

(g) See the Typical Multi-Section Pier Layout figure in §80.240(b)(25) of this title.

(h) See the Typical Single Section Pier Layout figure in §80.240(b)(26) of this title.

(i) Multi-section units mating line column supports:

(1) On multi-section units, openings larger than 4 feet must have piers installed at each end of the opening. To determine the pier loads, refer to the table in §80.240(a)(11) of this title. See the Determining Column Load and Marriage Line Elevation figure in §80.240(b)(27) of this title.

(2) Column loads for each section may be combined when the columns are opposite each other. The footer must be sized for the combined loading.

(3) Additional piers are required under marriage walls (see wall between column #3 and #4 in the Marriage Line Elevation figure in §80.240(b)(27) of this title. The maximum spacing is the same as the spacing at the main I-Beams, without perimeter piers, and one half the spacing of the perimeter piers, with perimeter piers installed.

(4) See the table in §80.240(a)(11) of this title for the mating line column loads.

§80.62. Registration [Approval] of Stabilizing Components and Systems.

(a) Installers shall use only prefabricated or site built stabilizing components and systems which are:

(1) registered with the Department,

(2) specified by the home manufacturer's DAPIA approved installation instructions, or

(3) specified for one or more homes in a particular area by a Texas licensed engineer or architect.

(b) [(a) Installers shall use only prefabricated or site built stabilizing components and systems approved by the department; specified by the home manufacturer's DAPIA approved installation instructions; or specified for one or more homes in a particular area by a Texas licensed engineer or architect.] Before accepting a registration of [granting approval for] any prefabricated stabilizing component or system that will be used for more than one home or granting renewal of such, the Department [department] will require the component or system to be certified by an engineer, architect, or independent testing laboratory. The engineer or architect may be licensed in any state. The independent testing laboratory must have at least one engineer or architect licensed in at least one state. The producer or vendor of the component or system [seeking department approval] must send a request letter to the Department [department] with at least two copies of the certification report. The Department [department] may accept certification reports in electronic formats. The certification report copies must have letter size (8.5 inch by 11 inch) or smaller pages. The [In the request letter, the] producer or vendor must provide written permission to [grant] the Department [department the right] to reproduce the certification report. If the Department accepts the registration of [department approves] the certification report, the Department [department] shall place a registration stamp [of approval] on the copies, keep one copy, and return all other stamped copies to the producer or vendor. The registration stamp [of approval] will include [have] the following information:

(1) the title "Texas Department of Housing and Community Affairs" Manufactured Housing Division;

(2) the phrase "Registered [Approved] stabilizing component or system"; and

(3) the date of registration [approval].

(c) [(b)] The Department [department] will maintain a list of stabilizing components and systems that have been registered with [approved by] the Department [department] for use in Texas and will post a current copy of the list on the Department's website.

(d) [(e)] A report that certifies a stabilizing component or system shall contain, at the minimum, the following:

(1) the name, address, phone number, facsimile number, and trademark of the agency issuing the certification report or the name, signature, license number, state where licensed, address, phone number, facsimile number, and seal of the engineer or architect;

(2) date of certification report;

(3) the name, address, phone number, and facsimile number of the vendor or producer of the component or system;

(4) drawing or photograph of component or system;

(5) a description of the vendor's or producer's method for identifying the component or system;

(6) at least a 2 inch by 4 inch blank space for the Department registration [department approval] stamp on each page or the cover page of a bound document;

(7) a unique number or other identification for the certification report;

(8) the initial qualifying test report or information about how the report can be obtained;

(9) a description of the continuing validation system and the time period of the certification;

(10) installation instructions for the component or system that are shipped to each purchaser;

(11) a description of the working load capacity for the component or system. If the component is a ground anchor, the anchor shall be certified by a professional engineer, architect or nationally recognized testing laboratory as to its resistance, based on the maximum angle of diagonal tie and/or vertical tie loading and angle of anchor installation, and type of soil in which the anchor is to be installed;

(12) a description of all allowable conditions for use of the component or system such as (but not limited to) types of soil, weather exposure, atmospheric environment (rural, industrial, coastal), and characteristics of other associated components; and

(13) a statement that the certifying independent testing laboratory, certifying engineer, or certifying architect certifies the component or system to be in conformance with all applicable standards [a specific standard] adopted by the Department [department]. This statement shall be on each page or shall be on the cover sheet of a bound document.

(e) [(d)] The Department [department] adopts the applicable standards and publications set forth in Chapter 43 of the International Code Council, latest edition of the [2000] International Residential Code for materials used to fabricate stabilizing components and systems. The Department [department] adopts the stabilizing component destruction test failure criteria of the FMHCSS (24 CFR, Part 3280) or latest edition of [and] the [2000] International Residential Code, Appendix E.

(f) [(e)] Applicable reports of the following organizations are acceptable as certification reports: National Evaluation Service, Inc.; International Conference of Building Officials (ICBO) Evaluation Service, Inc.; Southern Building Code Congress International (SBCCI) Public Safety Testing and Evaluation Services, Inc.; Building Officials and Code Administrators International (BOCA) Evaluation Reports, Inc.; the International Code Council (ICC); or a successor of any of these organizations.

(g) [(f)] The Department [department] may deny registration [withhold approval] if the certification information:

(1) is incomplete;

(2) does not conform to the rules of the Department [department];

(3) contradicts the qualifying tests; or

(4) has contradictory statements.

(h) [(g)] Conditions that may cause the executive director to issue an administrative order that withdraws registration [approval (or a renewal of approval)] from a stabilizing component or system may include but are not limited to:

(1) the engineer, architect, or independent testing laboratory withdraws the certification;

(2) the engineer, architect, or independent testing laboratory improperly certified the component or system;

(3) a significant characteristic of a device or system has been changed without a revision of the original certification;

(4) the producer distributes installation instructions that are substantively different from those in the certification or original qualifying tests;

(5) changes in the law, rules, or standards;

(6) the continuing validation system for a component has been changed without a revision of the original certification;

(7) information provided by the original certification is obsolete;

(8) the Department [department] receives evidence that the component or system often fails to anchor or support the home, or [and]

(9) the producer fails to provide test results after the Department [department] directs the producer to test the component or system. The test will be performed by a recognized independent testing laboratory under the observation of a qualified representative or designee of the Department [department].

(i) [(h)] Notice of withdrawal of registration [approval] of a component or system must be given to the producer and to all licensed installers, retailers, and manufacturers [all license holders].

(j) [(i)] The Department's registration of a [department's approval letters for] stabilizing component or system is [components and systems are] valid for a period of ten (10) years or for the time period of certification, whichever is less. The registration [approval letter] expires at the end of the shorter period.

(1) If the time period for certification exceeds the ten (10) year registration [approval] period, the producer of the stabilizing component or system [components and systems] may apply for a renewal of the registration [approval letter]. The renewal shall be valid for an additional period:

(A) of ten (10) years; or

(B) if the time period of certification expires prior to the end of the ten (10) year period, for a lesser period ending with the expiration of the time period of certification.

(2) All Department [department] approval letters issued prior to November 3, 1998, [the effective date of this section] remain valid for a period of ten (10) years [and expire ten (10) years] following the original effective date of this section and expire on November 3,

2008, or upon any previously assigned expiration date if that date is earlier.

(k) [(j)] A registration renewal request must be received from the [The] vendor or producer of the component or system [must apply for a renewal letter] at least ninety (90) calendar days prior to the date the certification or registration [approval letter] expires. The request must [and] supply the information necessary for the Department [department] to issue a registration renewal. [renewal letter: The department may issue a temporary renewal letter for a period of not more than six (6) months in order to have time to review all the information submitted by a producer or vendor. The contents of a renewal letter issued by the department are as follows:]

[(1) conditions of the renewal with a description of the department approval stamp that will appear on the document shipped by the producer or vendor to purchasers;]

[(2) a unique number or other identification for the renewal letter;]

[(3) the name, address, phone and facsimile number of the producer or vendor of the device or system;]

[(4) a description of the continuing validation system and the time period of the renewal;]

[(5) a reference to the document (single sheet or bound document) attached to the renewal letter which is shipped to each purchaser by the producer or vendor which includes:]

[(A) the name, address, phone and facsimile number of the vendor of the component or system;]

[(B) a description of the vendor's method of marking the component or system;]

[(C) drawing or photograph of component or system with a reference to the detailed drawing stamped by an engineer or architect;]

[(D) installation instructions;]

[(E) reference to the initial qualifying test report;]

[(F) reference to a previous Texas approval letter;]

[(G) at least a 2 inch by 4 inch blank space for the department approval stamp on each page or a cover page for a bound document;]

[(H) description of method for identifying the soil for ground anchors and footings;]

[(I) a description of the working load capacity for the component or system;]

[(J) if the component is a ground anchor, a certification by a professional engineer, architect, or nationally recognized testing laboratory as to its resistance, based on the maximum angle of diagonal tie and/or vertical tie loading and angle of anchor installation, and type of soil in which the anchor is to be installed; and]

[(K) a description of all allowable conditions for use of the component or system such as (but not limited to) types of soil, weather exposure, atmospheric environment (rural, industrial, coastal), and characteristics of other associated devices.]

(l) [(k)] Registered [Approved] components and systems sold to retailers or installers prior to the expiration of the applicable registration [approval letter] or renewal [letter] may be used and installed for a period of not more than ninety (90) calendar days following the date of expiration of their [the] approval, registration, or renewal [letter].

[(l) In December of each year, the department shall mail to all licensed installers, retailers, and manufacturers a list of all approved components and systems and the date on which the approval letter for each component or system expires.]

(m) Advertisements and instructions may not express or imply that the component or system has Department approval.

#### *§80.64. Procedures for Alterations.*

(a) No alteration, as defined in Chapter 1201 of the Occupations Code, shall be made [by a retailer or installer] without prior written approval of the Department [department]. A written request for any alteration approval shall be filed with the Department [department], except for the alterations which are pre-approved as described in this section. Approval will be granted upon evidence that Federal standards are met. If the alteration is approved, the alteration shall be completed in accordance with the Department's approval and any requirements made as a condition of the approval. Following completion of an approved alteration, the retailer shall notify the Department in writing, and the Department may accept the certification of the retailer that the alteration was made as approved. The Department may inspect the home, as altered, to assure compliance with the applicable standards.

[(1) If the alteration is not approved, the department will notify the retailer in writing of the reason for the denial. If additional information is necessary to complete the evaluation of the request for approval, the retailer shall furnish any additional information deemed necessary by the department.]

[(2) If the alteration is approved, the alteration shall be completed in accordance with the department's approval and any requirements made as a condition of the approval. Following completion of an approved alteration, the retailer shall notify the department in writing, and the department may accept the certification of the retailer that the alteration was made as approved. The department may inspect the home, as altered, to assure compliance with the applicable standards.]

(b) The installation of self-contained or split system ("A" coil) comfort cooling equipment and devices shall not be considered an alteration, if the installation is performed by a person holding the appropriate license in accordance with [the] specific written instructions, including specified tonnage, provided by one of the following: [of the manufacturer of the home as approved by the manufacturer's DAPIA; and if the specific equipment and devices used have been expressly approved by the manufacturer's DAPIA.]

(1) the manufacturer of the home, as approved by the manufacturer's DAPIA;

(2) a licensed professional engineer; or

(3) a licensed air conditioning contractor.

[(c) Other than as set forth in subsection (b) of this section, the installation of self-contained or split system ("A" coil) comfort cooling equipment and devices is an alteration and is pre-approved if done by a state licensed air conditioning contractor.]

(c) [(d)] If the sale of a home includes air conditioning, the selling retailer shall maintain in the sales file a record of the name and license number of the air conditioning contractor which installed the air conditioning system.

#### *§80.66. Rebuilding or Repairing a "Salvaged" Manufactured Home.*

(a) Any home which has sustained sufficient damage to be declared salvage as defined in §1201.461 of the Standards Act, may be rebuilt/repared for purposes of issuance of a manufactured Statement of Ownership and Location [home document of title] at the option of the

Department ~~[department]~~ after inspection in accordance with Department ~~[department]~~ procedures. Notification in writing to the Department ~~[department]~~ at its Austin headquarter's office shall be required before rebuilding/repair begins.

(b) The rebuilder must:

(1) notify the Department ~~[department]~~ in writing ten (10) business ~~[working]~~ days before rebuilding (or monthly for continuous activity) and provide the following, if available:

(A) HUD or Texas Seal number;

(B) data plate and comfort cooling certificate information (applicable wind and roof load zones, manufacturer's name and address, home model, list of appliance models, home production date, thermal zones, transmission coefficients, furnace certification temperatures, and duct capacity for cooling);

(C) copy of salvage declaration report if salvaged by an insurance company;

(D) description of damage;

(E) description of cause of damage (water, wind, impact, fire, etc.); and

(F) location of home during rebuilding.

(2) provide a plan for rebuilding, sealed by a licensed professional engineer, that contains the following:

(A) drawings and specifications that describe the rebuilding;

(B) if more than one home is rebuilt in any one (1) month period, then a quality assurance manual that describes the following:

(i) system testing;

(ii) inspection process of cavities before concealment; and

(iii) record keeping.

(C) list of new parts and appliances;

(D) list of reused or salvaged parts and appliances; and

(E) rebuilder's data plate (if applicable).

(3) notify the Department ~~[department]~~ when concealed cavities will be exposed for Department ~~[department]~~ inspectors;

(4) remove damaged material and equipment;

(5) add new or used materials and equipment;

(6) repair all defects; and

(7) repair and test all systems.

(c) The Department ~~[department]~~ may schedule inspections of the home during the rebuilding process.

~~[(d) Any person who purchased a rebuilt manufactured home and received a salvage title as evidence of ownership after June 18, 1987, may be issued a document of title upon application to the department.]~~

(d) ~~[(e)]~~ A manufactured home which has not sustained sufficient damage to be declared salvage may be refurbished to its original structural configuration so that it is habitable as defined by §1201.453 of the Standards Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503143

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 475-2206



## SUBCHAPTER E. GENERAL REQUIREMENTS

### 10 TAC §§80.119 - 80.123, 80.125 - 80.133, 80.135

The new and amended sections are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed new and amended rules.

#### *§80.119. Installation Responsibilities.*

(a) For new manufactured homes, the retailer is the installer and must warrant the proper installation of the home. If the retailer subcontracts with an independent licensed installer, then the subcontractor is jointly and severally liable for the portion of the installation that the subcontractor performed.

(b) For used manufactured homes, the person contracting with the consumer for the installation of the home is the installer and must warrant the proper installation of the home. If the contracting installer subcontracts with an independent licensed installer, then the subcontractor is jointly and severally liable for the portion of the installation that the subcontractor performed. The contracting installer is responsible to furnish the consumer with the installation warranty and site preparation notice. All verification and copies of the installation warranty and site preparation notice must be maintained in the installer's installation file for a period of no fewer than six (6) years from the date of installation.

(1) A ~~[The]~~ person contracting directly with the consumer for only the transportation of the used home to a manufactured home site is not the ~~[an]~~ installer if the person does not perform or contract to perform any installation functions. In this case, the installer is the person that performs any aspect of ~~[contracts for the construction of the foundation systems; whether temporary or permanent; and]~~ the placement and erection of the used home and its components on the stabilization ~~[foundation]~~ system, whether temporary or permanent.

(2) The selling retailer may sell a used home and deliver possession to the consumer at the sales location (e.g. ~~[e.g.]~~, F.O.B. the sales location). In this case, the retailer shall not perform any installation functions nor transport the home to the home site.

(c) The installer is fully responsible for the complete installation in accordance with all applicable requirements set forth in this

chapter even though the installer may subcontract certain installation functions to independent contractors pursuant to §1201.102(b) of the Standards Act. It is unlawful for a subcontractor who is acting as an agent for a licensed installer to advertise and/or offer installation services to any person unless the licensed installer's name appears prominently in the advertisement. For homes manufactured on or after September 1, 1997, a manufactured housing license holder shall not contract for sale or installation of any home installed in a wind zone, thermal zone, or roof load zone other than that allowed on the data plate.

(d) For each installation completed, the installer must complete a Notice of Installation (Form T) and submit the original, signed form with the required fee to the Department no later than the 15th day of the month after which the installation is completed. If an installer submits multiple installation reports at one time, a single payment for the combined fees may be submitted. For a month in which a licensed installer does not complete any installations, the installer must submit a written statement of that fact to the Department no later than the 15th day of the following month. [The sale of a new or used home by a retailer which includes an agreement to deliver the home and install the home at the home site is not completed until possession of the home is tendered to the consumer at the home site.]

(e) The completed Notice of Installation (Form T) may not be combined with the application for Statement of Ownership and Location. If a party to the transaction requires a copy of the Notice of Installation, the word "COPY" must be conspicuously stamped, typed, or written on it.

(f) [(e)] Electrical, fuel, mechanical, and plumbing system crossover connections for multi-section homes, and completion [completions] of drain lines underneath all homes in accordance with the requirements of this chapter [DAPIA approved on-site assembly drawings] are installer responsibilities and cannot be excluded by wording of the installation contract. The installation of air conditioning at the home site must be performed by a licensed air conditioning contractor. The installation and ventilation of skirting or other material that encloses the crawl space underneath a manufactured home is an installer responsibility, if it is part of the sales or installation contract.

[(f)] For all secondary moves (where there is no title transfer) the Notice of Installation and the required fee must be submitted to the department within ten (10) working days after the installation is completed.]

[(g)] When the installer selects the department to inspect the permanent foundation before concealment, the installer shall file an application to install a manufactured home on a permanent foundation on a form approved by the department. The required fee for the permanent foundation installation report shall be forwarded with the application. After the department inspects the permanent foundation and indicates acceptance of the permanent foundation on the form, the title company, attorney, retailer, or retailer's agent later files the Notice of Installation, including a copy of the form, with the public land records of the county and forwards a copy to the department. The reporting fee does not have to be paid to the department again.]

[(1)] Unless the retailer/installer follows the home installation manual or a department pre-approved foundation systems, a copy of the foundation system drawing as stamped and signed by the licensed engineer or architect must be filed with the application.]

[(2)] The application must be received by the department at least ten (10) calendar days prior to the date on which construction of the permanent foundation system is scheduled to begin.]

[(3)] Installers shall provide a copy of the application and the foundation system drawing to the department inspector at the time an inspection is performed.]

[(4)] If the permanent foundation system design is approved by the authorized local government official and if the applicable building inspection fees are paid to the local government, the provisions of this section do not apply. The installer must, however, file a sworn statement of these facts with the Notice of Installation.]

[(5)] If the permanent foundation for a home acquired and installed before January 1, 2002 is certified by the consumer/mortgagor and the lender/mortgagee in a real estate transaction, or is certified by the owner if there is no lien or the lien has been released, as having permanently affixed the structure to the real estate, the provisions of this section do not apply. The installation reporting fee must be paid and sent to the department along with the certification.]

[(6)] When specifically requested in writing by the department with a Department Real Estate Inspection Request Form, a contracting local government shall make and perform inspection and enforcement activities related to the construction of the foundation that permanently affixes a manufactured home to real estate. If the permanent foundation system and other site improvements are inspected and accepted by a contracting local government official before concealment, the local government records may be the verification required by §1201.222(e) of the Standards Act. The retailer/installer must file a Notice of Installation, including a copy of the local government inspection report, with the public land records of the county and forward a copy of the Notice of Installation to the department with the reporting fee.]

[(7)] If the site suitability, site preparation, site improvement, foundation construction, and installation for a home acquired on or after January 1, 2002 are verified by a retailer or installer, the provisions of this section do not apply, but the title company, attorney, retailer, or retailer's agent must file a Notice of Installation with the public land records of the county and forward a copy of the Notice of Installation to the department with the reporting fee.]

#### *§80.120. Manufacturer's Responsibilities.*

Manufacturers licensed with the Department [department] shall:

(1) Submit a monthly shipment report to the Department of all manufactured homes produced during the preceding month for shipment to any point in Texas. [Submit the reports required by §80.203 of this title (relating to Manufacturer's Monthly Shipment Report);]

(A) The report shall contain the following information:

(i) the complete HUD label number(s);

(ii) the complete serial number(s);

(iii) the license number of the retailer as assigned by the Department;

(iv) a designation as to single or multiple sections;  
and

(v) the name and address of the consumer, consignee, or person to whom it was shipped.

(B) The manufacturer's monthly shipment report shall be filed with the Department by the 15th day of the month following the manufacture of the home and/or shipment.

(C) If a manufacturer has no sales, consignments, or shipments to any person or place during any month, the report must be filed stating such fact.

(2) Use the Manufacturer's Certificate of Origin (MCO) prescribed by the Department in §80.260(a)(17) of this title ~~[department]~~ for homes shipped to retailers in Texas; and

(3) Supply to the Department ~~[department]~~ current and revised copies of approved installation manuals as required by §80.53 ~~[[§80.51]~~ of this title (relating to ~~[Manufactured Home Installation]~~ Requirements for Manufacturer's Designs and Installation Instructions).

*§80.121. Retailer's Responsibilities.*

(a) Manufactured housing retailers shall retain as part of each sales record and make available for copying and review by Department ~~[department]~~ personnel, upon request during normal business hours, the following information:

(1) For all manufactured homes as applicable:

(A) name and address of the consumer ~~[purchaser]~~ and the date of purchase;

(B) verification that the consumer ~~[purchaser]~~ received the Formaldehyde Health Notice required by §1201.153 of the Standards Act;

(C) verification that the consumer ~~[purchaser]~~ was advised of the Wind Zone, thermal zone, and roof load zone for which the home was constructed. If this information is not available for a used home, the consumer ~~[purchaser]~~ will be advised of this fact and the used home will be disclosed as being constructed to Wind Zone I, thermal zone 1, and the roof load design for the South;

(D) verification that the consumer ~~[purchaser]~~ received the Wind Zone notice as required by §1201.256 of the Standards Act ~~[[§80.50 of this title (relating to Wind Zone Regulations)]]~~;

(E) verification that the consumer ~~[purchaser]~~ received the site preparation notice;

(F) verification that the consumer ~~[purchaser]~~ received written notice of the two (2) year limitation of notice for filing a claim with the Department ~~[department]~~;

(G) verification that the disclosure ~~[Disclosure]~~ required in subsection (e) of this section ~~[by §80.181 of this title (relating to Section 162 Notice)]~~ was provided to the consumer ~~[purchaser]~~ prior to completing a credit application;

(H) verification that the disclosure required in subsection (f) of this section was provided to the consumer prior to completing a credit application ~~[by §80.182 (relating to 163 Disclosure) be delivered to the consumer at least 24 hours before execution of the contract in a chattel mortgage or consumer loan transaction]]~~;

(I) copies of the Notice of Installation ~~(Form T)~~ and attached documents;

(J) if the sale of a home includes air conditioning, the name and license number of the air conditioning contractor which installed the air conditioning system in accordance with §80.64(c) ~~[(d)]~~ of this title (relating to Procedures for Alterations); ~~[and]~~

(K) complete records of all alterations, in accordance with 24 CFR §3282.254~~;~~[-]

(L) copies of the completed application for Statement of Ownership and Location and all supporting documentation. A contract to convey title after completion of an extended payout, as opposed to a financed extended payout secured by a lien on the manufactured home, does not constitute a conveyance of good and marketable title. This does not prohibit a properly structured lease-purchase. An extended payout is any repayment involving more than one installment or any finance charge; and

~~(M) copies of the purchase contract identifying the retailer's bond for homes sold at a qualifying location.~~

(2) For all new manufactured homes:

(A) verification that a copy or the general description of the manufacturer's new home warranty and installation warranty were given to the consumer prior to the retailer's signing of any binding retail installment sales contract or other mutually binding agreement.

(B) verification that the manufacturer's new home warranty, consumer's manual, and retailer's installation warranty were delivered to the consumer ~~[purchaser]~~ pursuant to §1201.352(c) of the Standards Act (does not apply to damage caused by a move);

(C) verification of the date that the manufactured home information card was mailed to the manufacturer; and

~~[(D) verification of delivery of conspicuous notice relating to defect or damage under the new home warranty as required by §1201.359(b) of the Standards Act.]~~

(3) For used manufactured homes:

(A) verification that the consumer ~~[purchaser]~~ received the written 60-day habitability warranty; ~~and~~

(B) ~~if the retailer contracted for the installation as a part of the sales agreement,~~ verification that a copy or the general description of the retailer's installation warranty was ~~[were]~~ given to the consumer prior to signing of any binding retail installment sales contract or other mutually binding agreement. ~~[; if the retailer contracted for the installation as a part of the sales agreement; and]~~

(C) On the sale of a used home, the retailer or broker must provide the disclosure statement in §80.260(a)(11) of this title. ~~[verification that the purchaser received the retailer's installation warranty if the retailer contracted for the installation as a part of the sales agreement.]~~

(b) All verifications and copies of notices required by this chapter must be maintained in the retailer's sales file, and the sales file must be maintained for a period of not less than six (6) years from the date of sale. If a retailer has more than one sales location and wishes to maintain all of its records at a central location, it may do so provided that the retailer notifies the Department ~~[department]~~ more than sixty (60) calendar days in advance that its records are being maintained at a central location in Texas by providing the address of such location. Absent such notice the records of a particular home must be maintained at the address where the home is in inventory and from which it was sold. If the retailer wishes to discontinue the centralization of its records or to change the address where its records are kept, the retailer must notify the Department ~~[department]~~ more than sixty (60) calendar days in advance of the change of the location and the address and effective date of the new location.

(c) For ~~[new homes or used]~~ homes manufactured on or after September 1, 1997, a manufactured housing license holder shall not contract for sale ~~[or installation]~~ of any home ~~[under which the home would be]~~ installed in a wind zone, thermal zone, or roof load zone other than that allowed on the data plate.

(d) In a joint purchase, one consumer's signature is sufficient on any notice or disclosure statement as long as the consumer is on the sales documents.

(e) Section 162 Notice. Before accepting a completed credit application from a consumer, a retailer (or any salesperson or other agent acting on behalf of a retailer) shall provide the disclosure form in §80.260(a)(2) or (b)(1) of this title.

(1) The English version of Section 162 Notice form is in §80.260(a)(2) of this title.

(2) The Spanish version of Section 162 Notice form is in §80.260(b)(1) of this title. The retailer is not required to provide the form in Spanish; however, the consumer may request a copy in Spanish from the retailer or from the Department.

(f) 163 Disclosure. In a chattel mortgage or consumer loan transaction in which the retailer is participating in anyway, the retailer shall deliver to the consumer, before the first credit application, the disclosure form in §80.260(a)(3) of this title and a copy of the contract to be executed with all information included, signed by the retailer.

(g) If a retailer makes any material representation about a manufactured home that goes beyond the terms of written warranties to be provided, the consumer may require the retailer to confirm such representations in writing.

(h) If a retailer relies on a third party, such as a title company or closing attorney, to file with the Department the required forms necessary to enable the Department to issue a Statement of Ownership and Location to a consumer, the retailer must provide an instruction letter to that third party, advising them of their responsibilities to make such filings and the required timeframes therefore. This does not exculpate the retailer from responsibility. The retailer must retain with their sale records a copy of that instruction letter and all documentation provided to such third party to enable them to make such filings.

(i) If a retailer, acting as a broker, negotiates the sale of a manufactured home that is not reflected on the records of the Department as being in the name of the seller, the retailer must disclose, in writing, the identity of the actual owner to any consumer of such a home.

(j) If any goods or services being provided by a retailer in connection with the sale and/or installation of a manufactured home are to be provided at a date after the installation, the retailer must disclose, in writing, the goods and/or services to be provided and a good faith estimate as to when they will be provided.

(k) If any goods with a retail value of more than \$250 are to be provided in connection with the sale of a manufactured home and they are not specified on the data plate for the home, the retailer must describe them in the retail installment contract, purchase memorandum, or other sale document in sufficient detail to enable a third party to provide them under the responsibility of the retailer's surety bond should the retailer fail to provide them as agreed.

(l) A retailer accepting a deposit must give the consumer a written statement setting forth:

(1) The amount of such deposit;

(2) A statement of any requirements to obtain or limitations on any such refund;

(3) The name and business address of the person receiving such deposit; and

(4) The HUD label number(s), Texas seal number(s), serial number(s) or, for a new home that is being special ordered, detailed description of the manufactured home to which such deposit relates.

(m) Prior to requiring a consumer to accept delivery of a manufactured home, the retailer must give them an opportunity to inspect the home to make sure that it conforms to their contract, but this in no way affects the operation of any warranty required by law or granted contractually or affects or abridges any rights or obligations of either of the parties to the transaction. The retailer may require a punch list to be signed showing acceptance, which will be binding upon the consumer.

(n) Actions a retailer may not take:

(1) A retailer may not represent to a consumer that is purchasing a manufactured home with interim financing that the consumer will qualify for permanent financing if the retailer has any reason to believe that the consumer will not qualify for such permanent financing.

(2) A retailer may not increase the advertised price at which a manufactured home is to be sold based on the consumer's decision to make the purchase with or without financing provided by or arranged through the retailer.

(3) A retailer may not request or accept any document that is executed in blank or allow any alteration to a completed documented without the consumer's initialing and dating such changes to indicate agreement to them. Where information is not available, a statement of that fact (i.e., TBD - to be determined) may be entered in the blank. A consumer must be provided with copies of all documents they execute.

(4) A retailer may not knowingly accept or issue any check or other form of payment appearing on its face to be a *bona fide* payment but known not to represent good funds.

(5) A retailer may not negotiate or offer a deposit refund of less than is required by the Act. However, a retailer may, by written agreement with the consumer retain the amount of the deposit used to pay legitimate third party costs actually incurred, such as credit report fees or courier fees.

(o) In order to comply with the requirements of §1201.107(d)(1) and (2) of the Standards Act, the applicable sales agreement must identify the surety bond that applies to the transaction and contain the statement set forth in §80.181(2) of this title.

#### §80.122. Security Requirements.

(a) For purposes of meeting the security requirements of §1201.105 of the Standards Act, "other security" means an assignment of a certificate of deposit from or on a state or federally chartered bank or savings and loan association, properly signed and filed with the Department [department]. If other security is posted, the other security must be maintained in or by a banking institution located in this state. Such deposits are hereinafter referred to as security. Forms shall be furnished by the Department [department] for filing an assignment of such security. If such security is reduced by a claim, the license holder shall, within twenty (20) calendar days, make up the deficit as required by §1201.109(c) of the Standards Act. No advance notice is required by the Department [department] to the license holder, but the Department [department] shall verify receipt of the deposit.

(b) An assignment of such security filed with the Department [department] for compliance with §1201.105 of the Standards Act, shall remain on file with the Department [department] for two (2) years after the person ceases doing business as a manufacturer, retailer, broker, rebuilder, or installer, or until such later time as the director may determine that no claims exist against the security. A bond or certificate of deposit may be filed in lieu of or to replace the assigned security. In the event a bond is filed to replace the assigned security and the initial effective date of the bond is the same or prior to the date of the assignment of security, such security or deposit may be immediately withdrawn upon request.

(c) If the security requirement of a license holder is canceled during the annual license period, the license shall be automatically canceled on the date security coverage ceases.

(d) To be exempt from the additional security as required by §1201.106(b) of the Standards Act, a manufacturer who does not have



a manufacturing plant in this state must have a *bona fide* [bona fide] service facility.

(1) The manufacturer shall provide the Department [department] with the name, address and phone number of the service facility, conspicuous notice of which shall be provided to each Texas retailer who purchases homes from the manufacturer.

(2) The service facility shall be capable of compliance with the provisions of Sub-part I of the Manufactured Housing Improvement Act (latest edition) [procedural and enforcement regulations promulgated by HUD,] and capable of providing warranty service within the reasonable time requirements set by the Department in §80.132 of this title (relating to Procedures for Handling Consumer Complaints) [department], and shall be subject to periodic review and inspection by Department [department] personnel.

(3) If the Department [department] determines that the requirements of paragraph (2) of this subsection have not been met, notice must be sent of that determination and of the requirement of an additional bond amount.

§80.123. License Requirements.

(a) General License Requirements.

(1) Manufacturer. Any person constructing or assembling new manufactured housing for sale, exchange, or lease purchase within this state shall be licensed as a manufacturer. An application shall be submitted on the form required by the Department and shall be completed giving all the requested information. The application shall be accompanied by the required security, Articles of Incorporation or Assumed Name Certificate, and payment of the license fee. Every distinct corporate entity must be separately licensed. Each separate plant location operated by a license holder which is not on property which is contiguous to or located within 300 feet of the license holder's licensed manufacturing facility requires a separate license and security.

(2) Retailer. Any person engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering such for sale, exchange, or lease purchase to consumers shall be licensed as a retailer. An application for license shall be submitted on the form required by the Department and be completed giving all the requested information. The application shall be accompanied by the required security, Articles of Incorporation or Assumed Name Certificate, and payment of the license fee. No person shall be considered a retailer unless engaged in the sale, exchange, or lease purchase of two or more manufactured homes to consumers in any consecutive twelve (12) month period. Sales, exchanges, or lease purchases by any employee or agent of a business entity are deemed to be sales of the business entity. Each separate sales location which is not on property which is contiguous to or located within 300 feet of a licensed sales location requires a separate license and security. A retailer's license is not required to sale real estate.

(3) Broker.

(A) Any person engaged by one or more other persons to negotiate or offer to negotiate bargains or contracts for the sale, exchange, or lease purchase of a manufactured home to which a Statement of Ownership and Location has been issued and is outstanding shall be licensed as a manufactured housing broker. An application for license shall be submitted on the form required by the Department and be completed giving all the requested information. The application shall be accompanied by the required security, Articles of Incorporation or Assumed Name Certificate, and payment of the license fee. Each office location of the broker shall be licensed and proper security posted unless an office is on property which is contiguous to or located within 300 feet of an office licensed with the Department.

(B) A broker shall not maintain a location for the display of manufactured homes without being licensed as a retailer.

(C) A broker's license is not required to sell real estate.

(4) Rebuilder. Any person who desires to be licensed by the Department to alter, repair, or otherwise rebuild a salvaged manufactured home, as that term is defined in §1201.461 of the Standards Act, within this state, shall be licensed. An application shall be submitted on the form required by the Department and shall be completed, giving all the requested information. The application shall be accompanied by the required license fee and Articles of Incorporation or Assumed Name Certificate.

(5) Installer.

(A) Every person who contracts to perform or performs installations shall submit the required security, complete the necessary license forms and any other information needed, and be issued a license prior to performing an installation function. The required license fee, as specified in §80.20 of this title (relating to Fees) of this title must accompany the application for license and Articles of Incorporation or Assumed Name Certificate.

(i) Each applicant for license shall have public liability insurance coverage, including completed operations coverage in an amount of not less than \$300,000 for bodily injury each occurrence and property damage insurance in an amount of not less than \$100,000 each occurrence. A combined single limit of \$300,000 will be considered to be in compliance with this section. If the applicant will be engaged in the transportation of manufactured housing incidental to the installation, the applicant must also have motor vehicle liability insurance coverage in an amount of not less than \$250,000 bodily injury each person, \$500,000 bodily injury each occurrence, \$100,000 property damage each occurrence. A combined single limit of \$500,000 will be considered to be in compliance with this section. Cargo insurance on each home or transportable section of not less than \$50,000 per towing motor vehicle is required.

(ii) At the time of initial license and on renewal, a certificate of insurance must be filed with the Department by the insurance carrier or its authorized agent certifying the kind, type and amount of insurance coverage and which provides for thirty (30) calendar days notice of cancellation. If the applicant does not provide proof of the required motor vehicle liability insurance and the cargo coverage, the applicant must sign an affidavit that the applicant will not engage in any transportation of manufactured housing. If the applicant transports only his/her own property, and furnishes the Department with an affidavit attesting to that fact, cargo coverage is not required.

(iii) An installer, also licensed as a retailer, may satisfy the insurance requirements by filing a certificate of insurance which shows that the license holder has motor vehicle-garage liability coverage including completed operations, and has dealer's physical damage (open lot) including transit insurance coverage in amounts not less than those set forth in clause (i) of this subparagraph.

(iv) If the required insurance coverage expires or is canceled, and proof of replacement coverage is not received prior to the expiration date or date of cancellation, the installer's license is automatically terminated.

(B) The installer responsible for the installation in accordance with the provisions of §80.119 of this title (relating to Installation Responsibilities) shall maintain a file containing a copy of the installation report as filed with the Department.

(6) Homeowner's Temporary Installation.

(A) A homeowner may apply for a temporary license as an installer for the purpose of installing such owner's used manufactured home. The application shall be submitted on a form and contain such information as required by the Department, and it must be accompanied by a cashier's check or money order payable to TDHCA in payment for the required fee, as specified in §80.20 of this title. The issuance of a homeowner's temporary installer's license by the Department shall not relieve any warranty responsibility required by the Standards Act except for damage or defects which may occur as a result of the installation of the home by the homeowner.

(B) The application must be accompanied by a certificate of insurance issued by the insurance carrier or its authorized agent to prove insurance coverage for the installation of the home as follows: public liability insurance coverage including completed operations in an amount of not less than \$300,000 for bodily injury each occurrence and property damage insurance in an amount of not less than \$100,000 each occurrence, for which a combined single limit of \$300,000 will be considered to be in compliance with this section; and motor vehicle liability insurance coverage of not less than \$250,000 bodily injury each person, \$500,000 bodily injury each occurrence and \$100,000 property damage each occurrence, for which a combined single limit of \$500,000 will be considered to be in compliance with this section.

(C) Upon approval of the application, the homeowner will be issued a temporary license for the installation of that home set out in the application and a temporary installer's (TI) number. The temporary license shall be valid only for thirty (30) calendar days.

(D) The temporary installer's (TI) number must be displayed on the back of the home in letters and figures not less than 8 inches in height when the home is moved over the roads, streets, or highways in this state.

(7) Salesperson.

(A) The salesperson is an agent of the retailer for whom sales or lease-purchases, or offers, are made. The retailer is liable and responsible for the acts or omissions of a salesperson in connection with the sale or lease-purchase of a manufactured home. It is a violation of the Standards Act and this chapter for a retailer of manufactured housing to employ a salesperson who is not licensed with the Department.

(B) An application for license must be made by every salesperson. Each applicant for a salesperson's license must file with the Department an application for license on a form provided by the Department containing:

(i) the full legal name, permanent mailing address, date of birth, telephone number, Texas driver's license number or Texas identification number, and social security number of the applicant;

(ii) places of employment of the applicant for the preceding three (3) years, providing the name of firm(s), address(es), and dates of employment; and

(iii) a statement that the applicant is the authorized agent for a licensed and bonded manufactured housing retailer; the statement shall be signed by the sponsoring retailer. If there is a change in name, address, telephone, email address, or employer, an amended application must be submitted to the Department within ten (10) calendar days of this change.

(C) Except as may otherwise be authorized, the fee for a salesperson's license shall be submitted to the Department in the form of a cashier's check or money order. Salesperson licenses shall be valid for a period of two years from the date of issuance.

(D) Payment of the renewal fee shall be made via Texas Online or submitted to the Department along with the completed license renewal notice prior to the expiration of the current license.

(E) Salespersons shall be issued a license card by the Department containing effective date and license number. The salespersons shall be required to present a valid license card upon request.

(8) Applicable License Holder Ownership Changes.

(A) A license holder shall not change the location of a licensed business unless the license holder first files with the Department:

(i) a written notification of the address of the new location;

(ii) an endorsement to the bond reflecting the change of location; and

(iii) the original license.

(B) The change of location is not effective until the notification and endorsement are received by the Department.

(C) For a change in ownership of less than fifty percent (50%) of the licensed business entity, no new license is required provided that the existing bond or other security continues in effect. However, the current Articles of Incorporation or Assumed Name Certificate must accompany the request.

(D) For a change in ownership of fifty percent (50%) or more, the license holder must file with the Department, along with the appropriate fee and Articles of Incorporation or Assumed Name Certificate:

(i) a license addendum by the purchaser providing information as may be required by the Department; and

(ii) certification by the surety that the bond for the licensed business entity continues in effect after the change in ownership; or

(iii) an application for a new license along with a new bond or other security and proof that the education requirements of §1201.113 of the Standards Act, have been met.

(b) Education Requirements for Manufacturers, Retailers, Brokers, and Installers.

(1) Effective September 1, 1987, all applicants for license, except salespersons, shall attend and complete 20 hours of educational instruction as required by the Standards Act and this chapter. A manufacturer may request a one-day in-plant training session be presented by the Department in lieu of completing the instruction requirement. The license will not be issued until the owner, partner, corporate officer, or other person who will personally have the day-to-day management responsibility for the business location attends and completes this educational requirement. This section shall not apply to the renewal of licenses, nor to the license of additional business locations.

(2) Approving a training program conducted by a nonprofit educational institution or foundation as sanctioned by §1201.104(c)(2) of the Standards Act.

(A) An organization requesting approval to conduct the educational course required by the Standards Act must file a course approval request and course materials at least ninety (90) calendar days before the date of the first scheduled presentation. The director shall deliver a written notice of approval or denial no later than thirty (30) calendar days after receiving the request. If denied, the requestor may resubmit the course with corrections. The director will deliver a written

notice of approval or denial no later than fifteen (15) calendar days after receiving the re-submittal.

(i) Approval of Training Program: The director will approve the training program if the requirements in this subsection are met and the materials submitted comply with the required course topics in subparagraph (C) of this paragraph.

(ii) Denial of Training Program: The director will not approve the training program if the requirements are not met and the materials submitted do not comply with the required course topics in paragraph (3) of this subsection. The requestor will receive a written notice detailing the reason(s) for the denial. The requestor may re-submit the course with corrections as mentioned in subparagraph (A) of this paragraph.

(B) As a prerequisite for a license, the course must be twenty (20) hours in length and provide instruction in the law and consumer protection regulations.

(C) An educational training course shall consist of the following topics:

- (i) Presentation of the Law and Rules.
  - (I) Occupations Code, Chapter 1201, the Standards Act
  - (II) Chapter 80, Texas Administrative Code, Administrative Rules
  - (III) Texas Finance Code (applicable sections)
  - (IV) Texas Transportation Code (applicable sections)
  - (V) Federal Truth-in-Lending Act
  - (VI) Property Code
- (ii) Statement of Ownership and Location.
  - (I) Seals
  - (II) Application Fees
  - (III) Application Processing
  - (IV) Description of Forms
  - (V) Property Election
- (iii) Licensing.
  - (I) Manufacturer Application Form Requirements
  - (II) Retailer Application Form Requirements
  - (III) Installer Application Form Requirements
  - (IV) Salesperson Application Form Requirements
  - (V) Broker Application Form Requirements
  - (VI) Salvage/Rebuilder Application Form Requirements
  - (VII) Insurance and Bond Requirements
  - (VIII) License Renewal and Revision Requirements
  - (IX) Sale of non-habitable homes
  - (X) Retailer and Installer Responsibilities
- (iv) Installations.

(I) Anchoring, supporting, and multi-section connecting standards

(II) Requirements for Completing the Installation Inspection Report Form

(v) Consumer Complaints.

(I) Consumer Complaint Process

(II) Delivery of Warranty

(III) Correction Requirements

(IV) Requirements for Completing the Complaint Forms

(vi) Dispute Resolution.

(I) Dispute Resolution Process

(II) Texas Government Code, Chapter 2306

(III) Federal Trade Commission Manual: "How to Advertise Consumer Credit"

(IV) Business & Commerce Code, Deceptive Trade Practices (applicable sections)

(D) The training organization must provide each attendee of the class with written proof of having completed the entire 20 hour course.

(E) The primary administrator for the training program will be notified by the director of changes to the Law and Rules and the date that the changes will become effective.

(F) The director may revoke course approval for failure to comply with the standards or procedures set forth in this paragraph. Unless surrendered or revoked for cause, the approval will be valid for a period of two (2) years.

(3) Certification and Continuing Education Requirements for Salespersons.

(A) Acceptable evidence that the requirements of §1201.113(e) of the Standards Act have been satisfied would be a certificate, letter, or similar statement provided by the approved education provider indicating that the course was completed within the 90 days allowed. Such evidence may be submitted by fax, mail, e-mail, or in person.

(i) For initial licensing, if evidence of attendance is not received by the Department's close of business on the 95th day after the effective date of the license, the Department will initiate the suspension process.

(ii) For license renewal, evidence of attendance must be received by the Department before a salesperson's license may be renewed.

(B) Approval of courses and providers. In order to be considered for approval by the Board to provide continuing education courses a party wishing to be considered for such approval must submit, for each course for which approval is sought, a letter application, accompanied by the nonrefundable processing fee, and the following:

(i) A narrative overview of the course, describing subject matter to be covered;

(ii) Brief biographies, including credentials, of each instructor;

(iii) A copy of any course materials to be used. If the course materials are deemed to be proprietary they should be placed in

a separate envelope, marked confidential, and accompanied by a written statement as to why they should not be treated as open records. There is no assurance that such materials will ultimately be accorded any exemption from disclosure under the Open Records provisions of the Government Code. If the course is to be offered online, a hard copy of the material as well as an electronic version must be submitted.

(iv) A schedule of fees to be charged for the course;

(v) As such information becomes available, an indication as to the locations, times, and dates for offerings, or if provided online, instructions for how and when the course may be taken; and

(vi) Such other information as the Department may require.

(C) Once the staff determines that a request for approval is complete, that request will be placed on the next regularly scheduled meeting of the board of Directors for consideration. The staff will provide the board with a written recommendation on each such request. The staff will advise the applicant of the board's action within ten (10) business days of the date of the board meeting, including a written statement as to any limitations, conditions, or other requirements imposed.

(i) Approvals shall be for a period not to exceed two years. The Director may, at no cost, send a representative to attend any approved course to determine that the course is being taught in accordance with the terms of approval.

(ii) The Director may revoke or suspend approval of a course if the Director determines that the course is not being taught in accordance with the terms of approval or that the course is not being administered in accordance with the law or these rules. Any action to revoke or suspend such an approval is a contested matter under Chapter 2001, Government Code, and the party against whom revocation or suspension is sought may make a written request for a hearing before an Administrative Law Judge. If no such hearing is requested within thirty (30) calendar days after receipt of notice from the Director, the Director's order of suspension or revocation shall become final.

(D) Eight hours of approved training provided by the Department will meet the continuing education requirement for license renewal. The Department is under no obligation to offer any such classes and will do so only if it has sufficient resources to do so.

(c) License Application and Renewal.

(1) Application and Appeals.

(A) Initial application processing.

(i) It is the policy of the Department to issue the license within seven (7) business days after receipt of all required information and the following conditions have been met:

(I) all required forms are properly executed; and

(II) all requirements of applicable statutes and Department rules have been met.

(ii) License applications and accompanying documents received shall be processed and issued within seven (7) business days if all conditions for license have been met.

(iii) License applications and accompanying documents found to be incomplete or not properly executed shall be returned to the applicant with an explanation of the specific reason and what information is required to complete license. Upon receipt of all required information, the license will be issued within seven (7) business days.

(iv) Upon written request, the Department will call the license holder and provide the license number assigned.

(B) Appeals. Applicants may appeal any dispute arising from a violation of the time periods set for processing an application. An appeal is perfected by filing with the director a letter explaining the time period dispute. The letter of appeal must be received by the director no later than twenty (20) calendar days after the date of the letter of explanation from the Department outlined in subparagraph (A)(iii) of this paragraph. The Department will decide the appeal within twenty (20) calendar days of the receipt of the letter of appeal by the director.

(2) License Renewal Requirements. It is the responsibility of the license holder to renew the license prior to its expiration date.

(A) The Department will mail each license holder a renewal notice and application for renewal at least forty-five (45) calendar days prior to the date on which the current license expires. Notice will be mailed to the last known address indicated in Department records.

(B) In order to prevent the expiration of a certificate of license, a complete application for license renewal must be received by the Department prior to the date on which the current license expires.

(C) If an application for license renewal is received by the Department after the date on which the current license expires, the license will not be reinstated except with approval of the director. The director may require a hearing prior to reinstatement.

(D) All late renewal licenses and a reinstatement license approved by the director shall be dated as of the day following the date on which the most recent license expired.

(3) Payment of license fees.

(A) All required fees must be paid in order to obtain a valid license, including a renewal license, from the Department.

(B) Any license issued by the Department is void and of no effect if based upon a check or other form of payment that is later returned for insufficient funds, closed account, or other reason, regardless of whether the Department notifies the applicant of the insufficiency of payment or the invalidity of the license.

(C) It is the applicant's responsibility to ensure that all licensing fees are paid in valid U.S. funds.

(d) Denial, suspension, revocation, and appeals.

(1) Denial, Suspension, Renewal Denial, or Revocation of License Relating to Repeat Violations of the Standards Act or Department Rules.

(A) The following criteria shall be utilized to determine whether an applicant shall be issued or renewed a license if the applicant within the last two years from the date of the application has:

(i) two Agreed Final Orders of the same kind or type of violations; or

(ii) one Final Order of the same kind or type of violations.

(B) If the Department suspends, revokes, or denies renewal of a valid license, or denies a person's license or the opportunity to be examined for a license in accordance with this subsection because of the person's prior violations history, the Department shall:

(i) notify the person in writing stating reasons for the suspension, revocation, renewal denial, denial of disqualification; and

(ii) offer the person the opportunity for a hearing on the prior violation history.

(2) Denial, Suspension, Renewal Denial, or Revocation of License relating to the history of non-compliance with the Standards Act and Rules.

(A) The Department will consider the background of the applicant, license holder, sole proprietor, partner officer, managing employee, chief executive officer, chief executive operating officer, and directors of a corporation.

(B) In the evaluation the Department will consider the non-compliance history with the Standards Act and this chapter and will comply with the Texas Government Code, Chapter 2001, in proceeding with denial, suspension, or revocation of a license.

(3) Denial, Suspension, Renewal Denial, or Revocation of License Relating to Criminal Background.

(A) The following criteria shall be utilized to determine whether an applicant shall be issued a license if that applicant states in his/her application for said license that he/she has a record of criminal convictions within five (5) years preceding the date of the application:

(i) the nature and seriousness of the crime;

(ii) the relationship of the crime to the intended manufactured housing business activity;

(iii) the extent to which a license holder might engage in further criminal activity of the same or similar type as that in which the applicant previously had been involved;

(iv) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the functions and responsibilities of the license holder's occupation or industry; and

(v) whether the offenses were defined as crimes of moral turpitude by statute or common law, from Class A misdemeanors to first, second, and third degree felonies carrying fines and/or imprisonment or both. Special emphasis shall be given to the crimes of robbery, burglary, theft, embezzlement, sexual assault, and conversion.

(B) In addition to the factors that may be considered in subparagraph (A) of this paragraph, the Department, in determining the present fitness of a person who has been convicted of a crime, may consider the following:

(i) the extended nature of the person's past criminal activity;

(ii) the age of the person at the time of the commission of the crime;

(iii) the amount of time that has elapsed since the person's last criminal conviction;

(iv) the conduct and work activity of the person prior to and following the criminal conviction;

(v) evidence of the person's rehabilitation or attempted rehabilitation effort while incarcerated or following release; and

(vi) other evidence of the person's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(C) It shall be the responsibility of the applicant to the extent possible to secure and provide to the Department the recommendations of the prosecution, law enforcement, and correctional authorities as required by this subsection.

(D) The applicant shall furnish proof in any form, as may be required by the Department, that he/she has maintained a record of steady employment and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which the applicant was convicted.

(E) If the Department suspends or revokes a valid license, or denies a person a license or the opportunity to be examined for a license in accordance with this subsection because of the person's prior conviction of a crime and the relationship of the crime to the license, the Department shall:

(i) notify the person in writing stating reasons for the suspension, revocation, denial, or disqualification; and

(ii) offer the person the opportunity for a hearing on the record.

(4) A proceeding to suspend a salesperson's license may be initiated upon failure by a salesperson to fulfill the education required by §1201.113(e) of the Standards Act.

§80.125. Advertising Regulations.

(a) A license holder is prohibited from publishing or distributing any form of advertising which is false, deceptive, or misleading.

(b) There are no restrictions on:

(1) the use of any advertising medium;

(2) a person's personal appearance or the use of a person's voice in an advertisement;

(3) the size or duration of an advertisement; or

(4) the use of a trade name in an advertisement.

(c) Any advertisement must comply with applicable federal and state laws. [A retailer or broker must not advertise any interest rate or finance charge which is not expressed as an annual percentage rate and must comply with the disclosure requirements of the federal Truth-in-Lending Act.]

(d) Any advertisement by a retailer, broker, or installer (other than a sign/display advertisement at a licensed location, point of sale literature, or a price tag) must disclose the license number of the person who is advertising.

(e) Any advertisement by a salesperson must disclose the name and license number of the sponsoring retailer on whose behalf the salesperson is advertising.

(f) Where no consumer protection purposes would be served by requiring the license number to be disclosed, the director may grant exceptions to subsections (d) and (e) of this section based on the director's approved format.

§80.126. Rules for Hearings.

(a) Unless otherwise expressly set forth in the Standards Act or this chapter, all hearings shall be held and conducted pursuant to the applicable provisions of Government Code, Chapter 2001.

(b) Any party to a hearing may request that a record of the hearing be made and transcribed by an independent court reporter, other than an employee of the Department [department]. Such request must be made not later than seven (7) calendar days prior to the hearing. The additional cost and expense of the independent court reporter may be assessed against the party making the request. In all hearings, the published rules and regulations of the secretary of HUD shall be considered, if relevant. If the Department [department] believes that such

rules and regulations are relevant to any issue to be involved in the hearing, the notice of hearing shall specifically refer to such HUD rules and regulations.

(c) If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with Government Code, Chapter 2001, the hearing may proceed in that party's absence and a default judgment may be entered.

(d) Any person for whom a license was revoked, denied, or suspended by a final order issued after a hearing under Government Code, Chapter 2001, may only be issued a new license after a hearing under Government Code, Chapter 2001, and determination by the director that the certificate of license may be issued.

(e) Pursuant to the Administrative Procedures Act, each party has the right to file exceptions to the Proposal for Decision and present a brief with respect to the exceptions. All exceptions must be filed with the Department [department] within ten (10) business [working] days of the Proposal for Decision, with replies to be filed ten (10) business [working] days after the filing of exceptions.

(f) When an administrative hearing is held for any matter in which the Department seeks to take action against a licensee for violating the Standards Act or these rules, whether such action is an action to assess administrative penalties, to require corrective action, to require cessation of improper activities, to suspend or revoke a license, or any combination thereof, the Department shall assess the costs of the proceeding against any party that fails to appear at a duly noticed administrative hearing. The costs assessed shall be the greater of \$100 or the actual costs charged to the Department by the State Office of Administrative Hearings, the Office of the Attorney General, any court reporter, or any other third party providing services in connection with such hearing.

(g) The Department will seek the recovery of its costs from any party against whom it initiates an action if that action results in the entry of a final order taking any administrative action against that party, including the assessment of administrative penalties, requiring corrective action, requiring cessation of improper activities, suspension or revocation of a license, or any combination thereof.

#### *§80.127. Sanctions and Penalties.*

(a) In accordance with the provisions of Government Code, Chapter 2306, §2306.604, the director may assess and enforce penalties and sanctions against a person who violates any applicable law, rule, regulation, or administrative order of the Department [department]. The director may:

- (1) issue to the person a written reprimand that specifies the violation;
  - (2) revoke or suspend the person's license;
  - (3) place on probation a person whose license is suspended;
- or

(4) assess an administrative penalty in an amount not to exceed \$1,000 for each violation in lieu of, or in addition to, any other sanction or penalty.

(b) In determining the amount of a sanction or penalty, the board and the director shall consider:

- (1) the kind or type of violation and the seriousness of the violation;
- (2) the history of previous violations; the kind or type of previous violations, and the length of time between violations;

- (3) the amount necessary to deter future violations;
- (4) the efforts made to correct the violation or previous violations; and
- (5) any other matters that justice may require.

(c) Violations will be subject to sanctions and penalties as set forth in Government Code, Chapter 2306, §2306.6023 [2306.604]. Revocation or suspension of a license may be assessed only for multiple, consistent, and/or repeated violations. For first-time violations of a Department [department] rule which does not relate to the construction or installation of the home, a voluntary letter of compliance will be issued in lieu of other sanctions.

(d) When a licensee first receives written notification of a claim for warranty service, the licensee must respond timely to the request. A failure to do so shall constitute a violation of these rules.

(1) It is presumed that a response was timely if the required warranty service is provided within forty (40) calendar days from the date of the request; provided, however, immediate corrective action is required [that] if the matter involves an imminent safety hazard[, it must be addressed as quickly as is reasonably possible].

(2) The time to respond to a request for warranty service may be extended by the Director in response to a request setting forth good cause for the extension. Any such request must be made to the Director prior to the expiration of the allotted time for response. Requests may be made by U.S. First Class mail, by FAX, or by e-mail, or, if followed with written confirmation sent U.S. First Class mail, by telephone.

(3) If, after reasonable investigation, the licensee disputes whether warranty service is required and the licensee is unable to resolve the matter by agreement with the consumer, the licensee may request that the Department perform an inspection of the home. The running of the time to respond to the request for warranty service will be suspended from the time the request for inspection is received until the Department performs the inspection and issues its findings. When the Department concludes its review it will work with the affected licensee(s) and consumer(s) to agree upon a reasonable time to address its findings. In the event the parties cannot agree on a reasonable time, the Director shall issue a revised order assigning a time for compliance. Any such order shall be subject to appeal and a hearing. Any such hearing shall be a contested case under Tex.Gov.Code, Chapter 2001.

(e) All written notices and preliminary reports of violations shall specify in detail the particular law, rule, regulation, or administrative order alleged to have been violated along with a detailed statement of the facts on which the allegation is based.

(f) The respondent in an administrative hearing shall be entitled to due process and a hearing under the provisions of Government Code, Chapter 2001 and Chapter 2306. The respondent and the director may enter into a compromise settlement agreement in any contested matter prior to signing of the final order.

(g) Any exceptionally flagrant, willful violation that constitutes an imminent threat to health or safety may be a basis for pursuit of maximum statutory penalties and/or suspension or revocation of licenses as provided in the Standards Act regardless of whether it is a first or reoccurring occurrence.

(h) Anytime the record indicates that there is a high likelihood that a licensee's violation is a direct result of a systemic problem, it is appropriate to request the licensee to develop a plan to prevent future occurrences. Undertaking to develop such a system is an appropriate mitigating factor to be taken into account in determining what penalty to pursue.

(i) Any and all penalties are IN ADDITION to full compliance with the Standards Act and Rules (i.e., full, prompt corrective action, restitution, or whatever else the Standards Act and rules would have required in the first place). Failure to provide such compliance on a timely basis, as specified in the applicable order, will be deemed to be a violation of the order and serve as a basis for pursuing additional administrative action, including the assessing of additional penalties and the pursuit of suspension or revocation of licenses.

(j) In determining the appropriate amount of a penalty or other action, all relevant factors shall be considered, including, but not limited to: the resources of the licensee and their ability to pay fines, efforts to achieve compliance, the nature and frequency of recurring violations, and monetary impact on consumers.

(k) The Enforcement Matrix is in §80.240(a)(12) of this title.  
§80.128. *Arbitration Rules.*

(a) Definitions for Arbitration. The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (5) (No change.)

(6) Manufactured Homeowners' Recovery Trust Fund (Fund)--A special fund reserved for the payment of valid consumer claims and other authorized expenses of the Department [department].

(7) Party/Parties--Consumer, manufactured housing license holder of the Department [department], or a surety company, or the Department [department] in cases that potentially impact the Fund, and persons who hold, or have previously held, a security interest in the manufactured home, and any other person involved in the dispute who agrees to the arbitration.

(8) Surety bond--A bond or security filed with the Department [department] which shall be open to successive claims.

(9) (No change.)

(b) Election of Arbitration and Options.

(1) The Department [department] finds that the manufacture and sale of manufactured homes affects interstate commerce; accordingly, the parties may agree on binding arbitration under Title 9, United States Code.

(2) The binding arbitration shall not supersede nor interfere with the Department's [department's] informal dispute resolution process. The parties must submit all disputes involving warranties to the Department [department] for processing through the informal dispute resolution process.

(3) - (4) (No change.)

(c) - (d) (No change.)

(e) Duties of the Arbitrator.

(1) (No change.)

(2) If the dispute may involve the Fund, the arbitrator shall notify the Department [department] in writing as soon as she/he has knowledge of this fact and shall provide the Department [department] the opportunity to introduce evidence or present arguments relating to the claim against the Fund.

(3) Copies of the award shall be served on all parties and to the Department [department].

(f) (No change.)

(g) Notice To Department. All notices required to be sent to the Department [department] shall be sent to TDHCA, Manufactured Housing Division, P. O. Box 12489, Austin, Texas 78711.

(h) Notice To Surety Companies. Upon receipt of a notice of intent to arbitrate, the Department [department] shall furnish the selected arbitrator with a list of the surety companies of the license holders involved in the dispute to be given notice of the proceeding and an opportunity to participate.

(i) Arbitration Not Using SOAH. The provisions of this subsection relate only to arbitrations for which the parties have agreed to use the services of a private, local, regional, or national arbitration service.

(1) (No change.)

(2) The party requesting the arbitration shall file a written notice of intent to arbitrate with the Department [department]. The written notice shall:

(A) - (C) (No change.)

(j) Arbitration Using SOAH. The provisions of this subsection relate only to arbitrations for which the parties have agreed to use the services of SOAH. Subject to the provisions of subsections (a) - (h) of this section, the parties shall follow these additional rules.

(1) A written notice of intent to arbitrate shall be filed with the Manufactured Housing Division of the Department [department] and all involved parties by certified mail, return receipt requested. This notice of intent shall include a written statement that contains the following:

(A) - (E) (No change.)

(F) a statement that the hearing locale shall be determined by the arbitrator pursuant to paragraph (14)(D) of this subsection;

(G) (No change.)

(H) a nonrefundable filing fee of \$100 made payable to the Department [department];

(I) an estimate of length of the hearing in hours. This estimate must be approved by the Department [department] before arbitration can begin; and

(J) a deposit equal to 150% of the estimated cost of the hearing, payable to the Department [department]. This deposit is calculated by multiplying the estimated length of number of hearing hours by \$70. This figure is then multiplied by 1.5, and the product multiplied by the number of arbitrators to be used.

(2) Costs of Arbitration.

(A) - (B) (No change.)

(C) The unused portion of the deposit shall be refunded by the Department [department] after an accounting from the arbitrator.

(D) If the cost of the arbitration exceeds the deposit of the estimated cost, the Department [department] shall invoice the appropriate parties and collect any monies due the Department [department].

(E) All fees and deposits are payable to the Department [department] at P. O. Box 12489, Austin, Texas 78711.

(F) The Department [department] shall distribute arbitration fees to SOAH in response to monthly billing statements.

(3) Initiation of Arbitration.

(A) Immediately upon receipt of notice of intent to arbitrate, the filing fee, and the deposit of estimated cost, the Department [department] shall forward the information to SOAH so that arbitration can be initiated. The Department [department] shall furnish SOAH with a list of the surety companies of the license holders involved in the dispute so that they may be given notice of the arbitration and an opportunity to seek to be made parties of the arbitration. Also the Department [department] shall furnish SOAH an accounting of the filing fee and deposit of the estimated cost. The case shall be file stamped and given a SOAH docket number which identifies it as a case submitted for arbitration. The docket number will be used on all subsequent correspondence and documents filed with SOAH relating to this arbitration.

(B) (No change.)

(4) (No change.)

(5) Filing and Service of Documents.

(A) - (B) (No change.)

(C) If any document is sent to the SOAH clerk by certified mail or first class mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail on or before the last day for filing same, and it is received within three (3) business [work-ing] days of the filing date, it shall be deemed properly filed.

(D) (No change.)

(6) - (11) (No change.)

(12) Duties of the Arbitrator. In addition to the duties set forth in subsection (e) of this section, the arbitrator:

(A) shall notify the Department [department] when the arbitrator's fees and expenses have exceeded the deposit estimated by the electing party so the Department [department] can collect additional expenses; and

(B) shall not issue an Award until notified by the Department [department] in writing that all monies have been received by the Department [department] as described in subsection (j)(2) of this section.

(13) - (26) (No change.)

#### §80.129. Alternative Dispute Resolution.

The Department offers, at no charge, alternative dispute resolution as an inexpensive and informal way of attempting to resolve any claim or dispute. Depending on the parties, this may involve informal meetings or non-binding mediation. Alternative dispute resolution is available upon request. In the event that a disputed matter cannot be resolved in this manner, the Department reserves the right to pursue all other lawful means of resolution including, but not limited to, pursuit of administrative remedies.

#### §80.130. Delivery of Warranty.

(a) The written warranty that the used manufactured home is habitable as per §1201.455 of the Standards Act, shall have been timely delivered if given to the homeowner at or prior to possession or at the time the contract for sale is signed.

(b) The written manufacturer's new home construction warranty per §1201.351 of the Standards Act, shall be timely delivered if given to the homeowner at or prior to the time of initial installation at the consumer's homesite.

(c) For secondary installations, the "installer" as defined in §80.119(a) of this title (relating to Installation Requirements) shall deliver the installation warranty required by §1201.361 of the Standards

Act, to the consumer at the time of the installation at the consumer's homesite. The installer must keep a copy of the installation warranty and proof of delivery to the consumer in a permanent file for review by the Department [department].

#### §80.131. Correction Requirements.

(a) The retailer, installer, or manufacturer shall take immediate corrective action when notification is received from a consumer and the nature of the complaint indicates an imminent safety hazard or serious defect.

(b) Except as provided in subsection (a) of this section, manufacturers, retailers, and installers shall perform their obligations in accordance with their respective written warranty within a reasonable period of time. A reasonable period of time is deemed to be forty (40) calendar days following receipt of the consumer's written notification unless there is good cause requiring more time. The consumer's written notification must be given within [received by the manufacturer, retailer, or installer within forty (40) calendar days following the end of] the one (1) year warranty period for new homes and for used homes within sixty (60) calendar days after the date of the sale.

(c) The manufacturer, installer, and retailer shall make available for review by Department [department] personnel, records relating to their respective warranty responsibilities, to assure that warranty work has been accomplished and that warranty work has been done in accordance with design or standards criteria and properly completed.

#### §80.132. Procedures for Handling Consumer Complaints.

In order to comply with §1201.002 of the Standards Act, to provide for the protection of the citizens who purchase manufactured housing and to provide fair and effective consumer remedies, the following procedures will be followed:

(1) On initial written contact by a consumer, the Department [department] will attempt to verify if the consumer has a valid complaint that is subject to the Department's [department's] authority. If the Department [department] determines that the Department [department] has jurisdiction:

(A) If the consumer has not previously notified the manufacturer, retailer or installer [in writing], the Department [department] will forward the [instruct the consumer to provide] written notification to the manufacturer, retailer, or installer and give the license holder a reasonable amount of time to make repairs.

(B) If the consumer has previously provided written notification to the manufacturer, retailer or installer of the need for warranty service or repairs, but believes such has not been completed in a satisfactory manner, the Department [department] shall mail a complaint form to the consumer with instructions to complete it and return it to the Department [department]. On receipt of the complaint form, the Department [department] will make a determination regarding whether or not to open a consumer complaint. If a consumer complaint is opened, the Department [department] shall forward copies of the complaint form to the manufacturer, retailer and/or installer, as appropriate; [by certified mail, return receipt requested]. The Department [department] shall also include in the [certified] mail out the "Manufacturer's Response Form" or "Retailer's Response Form," as appropriate, which must be completed and returned to the Department [department] within ten (10) business [working] days. The Department [department] shall perform a home inspection, if required. If a home inspection is performed, the Department [department] will assign responsibilities for repair, and notify the manufacturer, retailer, installer, and consumer of their responsibilities to complete such warranty or service repair in accordance with §80.131(b) of this title (relating to Correction Requirements).



(2) The Department [department] shall make a consumer complaint home inspection upon request [if a consumer, manufacturer, or retailer requests such inspection].

(A) Consumer Request. The consumer may, at any time, request that the Department [department] perform a consumer complaint home inspection. A written complaint regarding failure to provide warranty work is deemed to be a request for a consumer complaint inspection. No written complaint form is required if a possible imminent safety hazard exists. [if the consumer has not been provided proper warranty service. The department may require that the request be in writing on a form provided by the department. If the department has reason to believe that the consumer complaint is covered by a warranty of a license holder, the department shall conduct a home inspection. There is no fee for an inspection performed at the request of the consumer when the department determines that a home inspection is warranted.]

(B) Industry Request. Manufacturer or retailer requests for a consumer complaint home inspection must be in writing on such form as the Department [department] may require, shall identify the home by HUD label and serial number(s), and shall provide the necessary information for the Department [department] to contact the consumer and determine the physical location of the home. The request must be accompanied by the required fee. The manufacturer or retailer may request a consumer complaint home inspection if the manufacturer or retailer:

(i) believes that the consumer's complaints are not covered by the respective written warranty, or implied warranties; or

(ii) believes that the warranty service was previously properly provided; or

(iii) has a dispute as to the respective responsibilities pursuant to the warranties.

(C) The Department [department] will perform the inspection within thirty (30) calendar days from the date an inspection is requested. The inspector shall:

(i) inspect all items included in the consumer complaint filed with the Department [department] and any additional items identified by the consumer prior to completion of the inspection. Any items identified by the consumer after the home inspection is complete shall be handled as a new consumer complaint.

(ii) For each item inspected, the inspector shall review the manufacturer's determinations in accordance with 24 CFR §3282.404(b) and evaluate whether or not the item is covered by either the manufacturer's, retailer's, or installer's warranty and, if covered, by which of the respective warranties. In addition, the inspector shall categorize items as follows:

(I) The item is a warranty item (also identify which warranty);

(II) The result of normal wear and tear, not a warranty item;

(III) The result of owner abuse neglect or modification, not a warranty item;

(IV) Within commercially acceptable standards, not a warranty item;

(V) Meets the current federal and state standards, not a warranty item;

(VI) Cosmetic, not a warranty item;

(VII) License holder not notified within warranty period;

(VIII) Unable to determine, additional information is required; or

(IX) Other (explain).

(D) Within ten (10) business [working] days following the consumer complaint home inspection, the Department [department] shall mail its written report and orders (includes amended reports and orders), if any, to the consumer, manufacturer, retailer, and installer by certified mail, return receipt requested.

(3) When service or repairs are completed following any notice or orders from the Department [department] pursuant to paragraph (2)(D) of this section, the manufacturer, retailer, and/or installer shall forward to the Department [department] copies of service or work orders reflecting the date the work was completed, or other documentation to establish that the warranty service or repairs have been completed. If the consumer refuses to sign the service or work order, the license holder shall note this fact on the service or work order. These service or work orders must be received by the Department [department] within ten (10) calendar days after the expiration of the period of time specified in the warranty order issued by the Department [department].

(4) Each license holder must maintain both a current physical location address and a current mailing address with the Department [department]. Service of notice of hearing or other notice sent by certified mail will be sent to the license holder's current mailing address according to the Department's [department's] records. If the Department [department] sends a notice to the manufacturer, retailer, or installer at the mailing address by certified mail, and the notice is refused or unclaimed, the Department [department] may presume that the license holder was provided proper notice. All written amended reports and orders will be serviced in this manner.

(5) If service or repairs cannot be made within the specified time frame, the license holder shall notify the Department [department] in writing prior to the expiration of the specified time frame by certified mail. The notice shall list those items which have been, or will be, completed within the time frame and shall show good cause why the remainder of the service or repairs cannot be made within the specified time frame. The license holder shall request an extension for a specific time. If the Department [department] fails to respond in writing to the request within five (5) business [working] days of the date of receipt of the notice of request for extension, the extension has been granted.

(6) Once the Department [department] receives the service or work orders with the consumer's signature indicating that all items have been satisfactorily completed, the Department [department] shall send a written notice to the consumer, stating that if the Department [department] does not receive a written reply within the thirty (30) calendar days the complaint file will be closed.

(7) If the Department [department] decides that another inspection is necessary because of conflicts among the parties to a complaint regarding the nature or quality of the corrective work, whomever the Department [department] deems to be responsible for errors requiring the additional inspection will be required to pay the inspection fee to the Department [department].

§80.133. Administration of Claims under the Manufactured Homeowners' Recovery Trust Fund.

(a) The Manufactured Homeowners' Recovery Trust Fund (the "Fund") is established to reimburse consumers for actual unsatisfied claims against licensed manufacturers, retailers, brokers, and installers for violations of the Standards Act, these rules, the FMHCSS

and its implementing regulations, and the Texas Deceptive Trade Practices-Consumer Protection Act. Payments from the Fund are subject to limitations, as set forth in §1201.405 of the Standards Act.

(b) Documentation of a claim by a Licensee who is deemed to be a "consumer" under §1201.358(d) of the Standards Act - When either a manufacturer or a retailer has their license revoked or goes out of business and the party that went out of business or had its license revoked has failed to perform required warranty work on a timely basis, the Director may direct a licensee that is still in business to perform the warranty work. A licensee so directed will be deemed to be a "consumer" under §1201.358(d) of the Standards Act and entitled to be reimbursed from the Fund for the costs of performing such re-assigned warranty work.

(1) The Director, before authorizing any party performing re-assigned warranty work to proceed, will require that an estimate be submitted, itemizing the hourly cost of labor required, the estimated time to complete the work, the itemized costs of any material, equipment, and supplies, and such additional out-of-pocket expenses as the licensee believes it will incur. Overhead costs may be included, not to exceed 20% of the cost of labor and materials. If the required estimate is not submitted and approved prior to the commencement of re-assigned warranty work, the party performing the work may not be reimbursed for that work until the Director has been provided with evidence establishing that the amount billed was justifiable in all respects. The estimate must be on the form prescribed by the Department, properly completed and executed.

(2) An order by the Director authorizing re-assigned warranty work to be performed will specify that:

(A) the amount billed shall not exceed the actual hours required and the actual out-of-pocket expenses incurred;

(B) the licensee should keep complete records, subject to audit by the Department for three years;

(C) the re-assigned warranty work shall, unless extended for good cause, [should] be performed within forty (40) days;

(D) the required evidence that the re-assigned warranty work was performed shall, unless extended for good cause, [should] be supplied to the Department within ten (10) days of completion; and

(E) re-assigned warranty work, once completed, is subject to being re-inspected.

(3) An order re-assigning warranty work and designating the party responsible for the re-assigned warranty work as a "consumer" under §1201.358(d) of the Standards Act becomes final if not appealed within thirty (30) days.

(4) Failure to provide a required estimate in connection with an order to perform re-assigned warranty work, once that order has become final, may serve as grounds for an administrative action against the licensee.

(5) Claims made by a consumer who is not a licensee and documentation of Fund claims -- when a consumer has a covered claim against a licensee and the licensee has not satisfied the claim, the Department shall take appropriate steps to make sure that the claim is proper and that all reasonable steps to satisfy the claim have been exhausted. In that regard:

(A) The Department, working with the consumer, shall identify the specific section(s) of law or rule that gave rise to the damages;

(B) If the damages arose as a result of a violation of the Texas Deceptive Trade Practice - Consumer Protection Act, the specific

violation must be adequately documented. Acceptable documentation would include a court order finding that such a violation had occurred or the establishing of confirmed facts that would specifically constitute such a violation, along with proof that the court order could not be satisfied. The specific violation must relate directly to the manufactured home or the sale transaction regarding the manufactured home. Tangentially related matters, such as deception in connection with actions as a mortgage broker or real estate broker, are generally not covered and the person responsible should be pursued in the other capacity through appropriate means.

(c) Attorneys' fees are subject to reimbursement from the Fund, subject to certain limitations. Before reimbursing a consumer for attorneys' fees, the Department shall review the fee statement(s), which must indicate the specific services performed, the amount of work required, and the hourly rate(s) charged. Fees not directly relating to efforts to recover the unsatisfied claims are not reimbursable.

(d) The Department shall require reasonable proof of efforts to collect the damages for which reimbursement from the Fund is sought.

(e) The Department may require the assignment of claims against licensees for any amounts for which payments are made from the Fund. The Department may re-assign any and all such claims to any bonding company or other surety that reimburses the Fund for such payments.

(f) If there is no licensee that can be assigned responsibility for warranty work or corrective action, the Department may require that the consumer select a contractor of their choice to perform the warranty work. The selected contractor shall submit an estimate itemizing the hourly cost of labor required, the estimated time to complete the work, the itemized costs of any material, equipment, and supplies, and such additional out-of-pocket expenses as the contractor believes it will incur. Overhead costs may be included, not to exceed 20% of the cost of labor and materials. Warranty work involving installation functions must be performed by a licensed and bonded installer as defined in §1201.101(d) of the Standards Act [enter into agreements with one or more licensees to perform such work after requesting bids from the qualified licensee(s) in the immediate area where the work is to be performed or if, because of the scope and nature of the work, there are no qualified local licensees; with such other licensees as may possess the resources and expertise to submit bids and perform the work]. If the only acceptable remedy is the replacement of a home, the Department may negotiate with qualified manufacturers to identify the lowest cost acceptable resolution.

(g) Notification of warranty work orders, inspections, and re-assigned warranty work

(1) When an inspection is to be conducted, other than an initial installation inspection, such as a follow-up installation inspection or a complaint inspection, the Department shall notify each licensee that has been assigned responsibility for warranty items, provided that the licensee still holds an active license, by notifying the licensee, by regular mail to their address of record, as on file with Department. If a party to be notified of an inspection is no longer licensed but has left a mailing address on file with the Department, such party shall be given notice of any such inspection by first class mail to that address.

(2) When warranty work orders are issued, they will be sent to each licensee to whom responsibility has been assigned. They shall be sent to the licensee by regular mail to their address of record, as on file with Department.

(3) If a licensee who has been assigned warranty responsibilities is no longer in business, the Department will, in addition to

notifying their surety, notify them of the time and place of the inspection. Such notification to the out-of-business licensee shall be sent to them at their latest business address of record on file with the Department. Unless the out-of-business licensee advises the Department, in writing, on or before the date of the inspection or actually attends the inspection, the Department will re-assign the warranty work, if any, arising from the findings of the inspection to the retailer or manufacturer who is not out-of-business. The party to whom the warranty work is re-assigned shall perform the warranty work and shall be a consumer, as provided for in §1201.358(d) of the Standards Act, entitled to be reimbursed from the Fund.

(4) Notification of the surety of an out-of-business or no longer licensed licensee is given in order to afford the surety an opportunity, in accordance with §1201.407 of the Standards Act, to participation in the informal dispute resolution process.

(5) The Director shall consider the views of the surety, if any, as expressed in the informal dispute resolution process. However, the ultimate responsibility to determine how best to proceed rests with the Director, who shall make his or her decision based on a consideration of all relevant factors and the need to protect the health and safety of consumers and to carry out the purposes of the Standards Act.

(6) Once a payment is made from the Fund, the Department shall file a claim under the bond of the party primarily responsible for the unsatisfied claim. In the case of re-assigned warranty work reimbursed by the Fund, the claim shall be against the bond of the party that is no longer in business or whose license has been revoked.

(7) A surety bond issued in connection with a person or entity that is a licensee shall remain in effect with respect to that person or entity, even though the surety bond may be amended to cover one or more additional person or entities or to cover that person operating under one or more different names or identities UNLESS the amendment to the bond specifically terminates the bond with respect to such person or entity.

#### *§80.135. Manufactured Housing Auctions.*

##### *(a) Auction of Manufactured Housing to Texas Consumers.*

(1) The person(s) selling more than one home through an auction in a twelve (12) month period must be licensed as a retailer with this Department [department] and the specific location at which the auction is to be held must be bonded in accordance with the Standards Act.

(2) The auctioneer must be licensed as a manufactured housing salesperson with the Texas Department of Housing and Community Affairs and licensed as an auctioneer, pursuant to the Texas Auctioneer Act, Occupations Code, Chapter 1802.

(3) The retailer must notify this Department [department] in writing at least thirty (30) calendar days prior to the auction with such notice to contain the date, time, and physical address and location of the proposed auction.

(4) The retailer must keep and maintain a file copy of all notices, circulars, or advertisements of any kind relating to the auction of manufactured housing.

(5) A manufactured home that has been salvaged or is not habitable may not be sold, conveyed, or transferred to a consumer as a manufactured home for dwelling purposes. [The seller must surrender the title and HUD label or Texas Seal, or a statement that there was no label or seal, to the department along with the required fee and an application to cancel the title to business use, before the home is auctioned.]

(6) The retailer must give notice to each person attending the auction, and the notice shall contain the following:

(A) a statement that the homes offered for sale are habitable pursuant to §1201.455 of the Standards Act;

(B) a statement that any home purchased at the auction must be installed by an installer licensed with this Department [department];

(C) the appropriate warning concerning formaldehyde as required by §1201.153 of the Standards Act; and

(D) the appropriate notice regarding home construction and Wind Zone standards as outlined in the Standards Act.

(7) The retailer shall retain sales records as required by §80.121 of this title (relating to Retailer's Responsibilities) if the home is sold to a consumer.

##### *(b) Auction of Manufactured Housing to Licensed Retailers.*

(1) No license with the Department [department] is required of a lender whose repossessed manufactured homes are being auctioned, if the lender is selling to a retailer who is licensed with the Department [department]. The auctioneer must be licensed only pursuant to the Texas Revised Civil Statutes, Texas Auctioneer Act, Occupations Code, Chapter 1802.

(2) The auctioneer must notify the Texas Department of Housing and Community Affairs at least thirty (30) calendar days prior to the auction. Such notice must contain the date, time, and physical address and location of the proposed auction.

(3) The auctioneer must keep and maintain a file copy of all notices, circulars, or advertisements of any kind relating to the auction of manufactured housing.

(4) The auctioneer must keep and maintain an accurate register of all persons attending the auction. This register should show the name of the individual, the manufactured housing retailer business name, the address of the retailer, and the current license number of the manufactured housing retailer.

(5) The auctioneer must keep and forward to the Texas Department of Housing and Community Affairs immediately following the auction, a complete list of all manufactured homes sold at such auction including the name of manufacturer, model, serial and HUD numbers, along with the name, address, and license number of the retailer purchasing the home.

(6) In lieu of the auctioneer maintaining and filing the information in paragraphs (1) - (5) of this subsection with the Department [department], the consigner of the manufactured homes may contract with the auctioneer to file the information with the Department [department].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503144

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 475-2206

◆ ◆ ◆

## SUBCHAPTER F. CONSUMER NOTICE REQUIREMENTS

### 10 TAC §§80.180, 80.181, 80.183

The new and amended sections are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed new and amended rules.

#### *§80.180. Formaldehyde Notice Requirements.*

(a) The consumer notice related to formaldehyde must be posted in the home in accordance with the FMHCSS.

(b) In addition to the requirement of subsection (a) of this section:

(1) A retailer shall deliver a copy of the "Important Health Notice" prescribed by HUD to the consumer before the execution of any mutually binding sales agreement.

(2) The consumer must sign the copy of the notice. The retailer shall keep the originally signed copy in the permanent sales file and shall give a copy to the consumer at the time the original copy is signed. If requested, the retailer shall deliver a copy of the signed notice to the manufacturer of the home.

(3) The copy of the notice to be signed by the consumer may be reduced in size from the notice required to be posted in the home and may be entirely reproduced in either red or black. This copy of the notice must be on a form approved by the Department [department], dated, and must contain the following certification immediately above the place for the consumer's signature in bold face type which is at least eight points in size: "I (We) certify that this Important Health Notice was prominently displayed in the kitchen of the manufactured home being purchased and further that this notice was given to me (us) on the date shown and prior to the signing of any binding agreement. I (We) have read the notice and understand it."

#### *§80.181. Sale of a Home from a Location other than a Principal, Licensed, Retail Location.*

In order to comply with the provisions of §1201.107 of the Standards Act, a retailer or broker must:

(1) have a current, in effect surety bond issued in the most recent form promulgated by the Department; and

(2) the applicable sales agreement must identify the surety bond that applies to the transaction and contain the following statement: "The above-described surety bond applies to this transaction in the following manner: The bond is issued to the Texas Manufactured Homeowners' Recovery Trust Fund (the "Fund"), a fund described in the Texas Manufactured Housing Standards Act (Tex. Occ. Code, Chapter 1201) and administered by the Executive Director of the Texas Department of Housing and Community Affairs, Manufactured Housing Division, as trustee of the Fund. If the Fund makes a payment to a consumer, the Fund will seek to recover under the surety bond. The obligation of the Fund to compensate a consumer for damages subject to reimbursement by the Fund is independent of the Fund's right or ability to recover from the above-described surety bond, but recoveries on surety bonds are an important part of the Fund's ability to maintain

sufficient assets to compensate consumers. There can be no assurance that the Fund will have sufficient assets to compensate a consumer for a covered claim. Assuming it has sufficient assets to compensate a consumer for a covered claim, the liability of the Fund is limited to actual damages, not to exceed \$35,000, and attorneys' fees, not to exceed 20% of the actual damages."

#### *§80.183. Three Day Right of Rescission.*

(a) The first calendar day after the day on which the applicable contract is executed is the first day, and the three day right of rescission expires unless notice has been given prior to midnight on the third calendar day following the date of execution of the applicable contract.

(b) The three day right of rescission may not be waived.

(c) Although a licensee is not required to obtain a signed acknowledgment, a [A] licensee may rely on a signed acknowledgement from a consumer, executed after the right of rescission has expired, confirming that the right expired without being exercised.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503145

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 475-2206



## SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

### 10 TAC §§80.201, 80.205, 80.208

The amended sections are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed amended rules.

#### *§80.201. Issuance of Statements of Ownership and Location.*

(a) Application Requirements. In order to be deemed complete, an application for a Statement of Ownership and Location must include, as applicable: [Initial Statements.]

{(1) The Department will issue an initial Statement of Ownership and Location within ten (10) working days after receipt of a complete application, accompanied by all documentation necessary to support the application.}

{(2) In order to be deemed complete, an application for a Statement of Ownership and Location must include, as applicable:}

(1) [(A)] A completed and fully executed Application for Statement of Ownership and Location on the Department's prescribed form;

(2) ~~[(B)]~~ The required fee;

(3) ~~[(C)]~~ To record a lien for which the Department does not have the owner's consent [If one or more liens are to be reflected on the Statement of Ownership and Location], copies of documentation establishing the creation[, and existence[, and priority] of each such lien;

(4) ~~[(D)]~~ A statement from the tax appraiser, of the county where the home was located the prior January 1st, that there are no unpaid taxes for the prior year for which a lien could be filed with the Department if such taxes were not paid. The statement may be provided on the Statement of No Unpaid Taxes form published in §80.260(b)(2) or on any other form providing the same information. [If a manufactured home is relocated, satisfactory evidence that there are no property tax liens on the home or that provision has been made for them. Satisfactory evidence would include, but would not be limited to, evidence that the relocation was effected with a TxDOT approved move or a statement from a title company, lender, or escrow agent, executed by a person purporting to be its duly authorized officer or representative, that money sufficient to pay the taxes was being held by them and would be applied to the payment of those taxes.]

(5) If one or more existing liens are to be released, assigned, or foreclosed, appropriate supporting documentation;

(6) If an application for Statement of Ownership and Location indicates a change in ownership but no change in lien, supporting documentation that clearly establishes that the lienholder consented to that change;

(7) If a manufactured home is to be designated for use as a dwelling after the home has been designated for business use, salvage, or as real property, evidence of a satisfactory habitability inspection by the Department.

(8) If an application for Statement of Ownership and Location is for a home that is being declared abandoned, a completed notarized Affidavit of Fact for Abandonment on the form set forth in §80.260(a)(15) of this title with all required supporting documents.

(b) Right of Survivorship: If the survivorship election is taken, then the Department will issue a new Statement of Ownership and Location to the surviving person(s) upon receipt of a copy of the death certificate of the deceased person(s), and a properly executed application for Statement of Ownership and Location, and the applicable fee. [Revised Statements:]

(1) The Department will issue a revised Statement of Ownership and Location within ten (10) working days after receipt of a complete application, accompanied by all documentation necessary to support the application.]

(2) In order to be deemed complete, an application for a revised Statement of Ownership and Location must include, as applicable:]

~~[(A)]~~ A completed and fully executed Application for Statement of Ownership and Location on the Department's prescribed form;]

~~[(B)]~~ The required fee;]

~~[(C)]~~ If one or more liens are to be reflected on the Statement of Ownership and Location, copies of documentation establishing the creation, existence, and priority of each such lien;]

~~[(D)]~~ If one or more existing liens are to be released or transferred, appropriate supporting documentation, including a properly executed and completed release of lien form;]

~~[(E)]~~ If a manufactured home is to be designated for use as a dwelling after the home has been designated for business use only or salvage, evidence of a satisfactory habitability inspection by the Department, accompanied by the required fee;]

~~[(F)]~~ If a manufactured home is relocated, satisfactory evidence that there are no property tax liens on the home or that provision has been made for them. Satisfactory evidence would include but would not be limited to, evidence that the relocation was effected with a TxDOT approved move, a paid taxes certificate from the county tax assessor for the county where the home was located prior to the move, or an original, signed statement from a title company, lender, or escrow agent, executed by a person purporting to be its duly authorized officer or representative, that money sufficient to pay the taxes was being held by them and would be applied to the payment of those taxes;]

~~[(G)]~~ In instances where title to a manufactured home is conveyed in a transaction other than a transaction requiring a license under the Standards Act, such as testamentary and non-testamentary transfers, private sales not requiring a license, voluntary or court-ordered partitions, etc, originals or certified copies of appropriate documentation to support any such transfer, as required by the Department; and]

(3) Any change in a Statement of Ownership and Location shall result in a new Statement of Ownership and Location being issued, and the new Statement of Ownership and Location shall specify the effective date which shall be either the date of the submission of the completed application or such other date as the Director may determine is appropriately supported by the information provided.]

~~[(e)]~~ Replacing a Document of Title:]

(1) Upon receipt of a written request, applicable fee(s), and any necessary additional information, including a notarized statement of election of real or personal property status, the Department will replace a document of title with a Statement of Ownership and Location:]

(2) If a manufactured home title showed that it was personal property, that will be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued. Likewise, if a manufactured home has had a certificate of attachment issued and had title cancelled to real property, that shall be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued.]

~~[(d)]~~ Corrections to Statements of Ownership and Location.

(1) If a correction is required as a result of a Department [department] error, it will be corrected at no charge.

(2) If an error was made for another reason, it will be corrected upon receipt of all documentation needed to support the correction:]

(2) ~~[(3)]~~ If a correction is requested because of an error made by a party other than the Department [department], the correction will not be made until the Department [department] receives the following:

(A) A complete corrected application for Statement of Ownership and Location,

(B) Any necessary supporting documentation, and

(C) The required fee [of \$25], which can be reduced or waived by the director for good cause.

(d) Upon issuance of a Statement of Ownership and Location, the Department will mail one certified copy to the owner and one certified copy to the lienholder. If additional certified copies are desired, a written request must be submitted and accompanied by the additional fee.

(e) Exchanging a Document of Title for a Statement of Ownership and Location.

(1) Upon receipt of the original title and completed application for Statement of Ownership and Location, including the physical location of the home, the Department will issue a Statement of Ownership and Location.

(2) If a manufactured home title showed that it was personal property, that will be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued. Likewise, if a manufactured home has had a certificate of attachment issued and had title cancelled to real property, that shall be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued.

(f) [(e)] Updating of Statements of Ownership and Location on Manufactured Homes Transferred as Real Property.

(1) When a manufactured home has become real property because the owner elected real property status and their Statement of Ownership and Location was recorded in the appropriate county records, the home may be sold or transferred as real property by the customary means used for real property transactions. As long as the home remains real property at the same location, ownership of the home is confirmed in the same manner as any other real property, rather than by verifying Department ~~[department]~~ records. A [Any buyer or transferee is not required to apply for a] new Statement of Ownership and Location does not have to be applied for until and unless:

(A) the manufactured home is moved to a new location;

(B) the current owner of the manufactured home wishes to convert it to personal property status; or

(C) the manufactured home no longer meets the requirements to be classified as real property (such as the home being on property subject to a long term lease which is not assignable to the buyer or transferee).

(2) To convert a [the] manufactured home [back] from real property to personal property, the owner of the home must submit a completed Application for Statement of Ownership and Location to the Department ~~[department]~~ with supporting documentation as follows:

(A) If the applicant is not the owner of record with the Department ~~[department]~~, satisfactory proof of ownership under a complete chain of title. Acceptable evidence would include, but not be limited to, authenticated copies of all intervening transfer documents, a court order confirming ownership, or ~~[a commitment for]~~ title insurance policy in such owner's name issued by a title insurance company licensed to do business in Texas.

(B) Satisfactory evidence that any liens on the manufactured home have been discharged or that all lienholders have consented to the change.

(C) Evidence of a satisfactory habitability inspection by the Department.

(3) Upon receipt of the certified copy of the new Statement of Ownership and Location that reflects the real [personal] property election of the home, the certified copy shall be filed [owner shall file that certified copy] in the county real property records, at which time

the real ~~[personal]~~ property election will take effect. A copy stamped "filed" by the county must be submitted to the Department as evidence that the requirements of §1201.2055 of the Standards Act have been satisfied and the real property election to be perfected.

§80.205. Inventory Finance Liens [Lien Information].

~~[(a) Inventory Financing Liens.]~~

(a) ~~[(4)]~~ A lien and security interest on manufactured homes in the inventory of a retailer, as well as to any proceeds of the sale of those homes, is perfected by filing an inventory finance security form approved by the Department ~~[department]~~ and in compliance with these sections.

(b) ~~[(2)]~~ The creditor-lender financing the inventory and the retailer must execute a security agreement which expressly sets forth the rights and obligations of the two parties in the inventory finance arrangement.

(c) ~~[(3)]~~ The inventory finance security form shall contain the following:

(1) ~~[(A)]~~ signatures of both the retailer and the creditor-lender;

(2) ~~[(B)]~~ the name, sales location, address, and license number of the retailer; and

(3) ~~[(C)]~~ the name and address of the creditor-lender.

(d) ~~[(4)]~~ A separate form must be filed for each licensed sales location.

(e) ~~[(5)]~~ For manufactured homes for which no Statement of Ownership and Location or Document of Title has been issued, the filing of the inventory-finance security form perfects a security interest in all manufactured homes, whether then owned or thereafter acquired, as well as to any proceeds of the sale of those homes, provided that:

(1) ~~[(A)]~~ the home is financed by the creditor-lender;

(2) ~~[(B)]~~ the creditor-lender has advanced any funds for the home; or

(3) ~~[(C)]~~ the creditor-lender has incurred any obligation for the home.

(f) ~~[(6)]~~ This security interest attaches to a particular manufactured home only when the act described in either subsection (e)(1), (2), or (3) of this section ~~[paragraph (5)(A), (B), or (C) of this subsection]~~ would either:

(1) ~~[(A)]~~ enable the retailer to acquire the manufactured home;

(2) ~~[(B)]~~ pay the existing balance of a creditor-lender for funds secured by a security interest in the manufactured home;

(3) ~~[(C)]~~ in the event that the retailer and manufacturer are the same entity, pay funds to the manufacturer-retailer after completion of the manufacture of the manufactured home; or

(4) ~~[(D)]~~ in the event that the retailer has no debt owed against the inventory, enable the retailer to use the manufactured home as security for a new debt.

(g) ~~[(7)]~~ No provision in the security agreement between the parties to an inventory financing arrangement shall in any way modify, change, or supersede the requirements of this section for the perfection of security interests in manufactured homes in the inventory of a retailer.

~~[(b) Release of Liens.]~~

{(1) The lienholder of a lien recorded on a Statement of Ownership and Location shall deliver a properly executed release of lien form prescribed by the department to the owner of record within thirty (30) calendar days of the satisfaction of the debt or obligation secured by the lien.}

{(2) The lien recorded on a Statement of Ownership and Location shall be released by the department upon receipt of a release of lien form properly executed by the lienholder of record, and a new Statement of Ownership and Location shall be issued.}

{(e) Foreclosure or Repossession.}

{(1) In the event of sale after either foreclosure or repossession of a manufactured home that is not real property, the department shall issue a new Statement of Ownership and Location upon receipt of a properly executed application containing the following information:}

{(A) The description of the home along with an indication of whether the home is a foreclosure or repossession;}

{(B) The name and address of the lienholder and name of the person authorized to sign for the lienholder;}

{(C) An indication of whether the home was repossessed by judicial order or sequestration. A true copy of the order or bill of sale shall be attached; and }

{(D) A certification that:}

{(i) the home will be sold from a licensed retailer's location; or}

{(ii) the seller is not required to be licensed under Subchapter C of the Standards Act.}

{(2) In the event of foreclosure or repossession of a manufactured home that is not real property, the department will not issue a new Statement of Ownership and Location until receipt of release of lien.}

{(d) Right of Survivorship: If two or more eligible persons are shown as purchasers or transferees, they may execute the right of survivorship election on an application for a Statement of Ownership and Location. Such election constitutes an agreement for the right of survivorship. If the survivorship election is taken, then the department will issue a new Statement of Ownership and Location to the surviving person(s) upon receipt of a copy of the death certificate of the deceased person(s), and a properly executed application for Statement of Ownership and Location, and the applicable fee.}

§80.208. *Recording Tax Liens [Lien] on Manufactured Homes.*

(a) For all manufactured homes elected as personal property and sold, or to which ownership is transferred, after December 31, 1985 [and before August 31, 2001] and for all manufactured homes that are not real property sold, or to which ownership is transferred after December 31, 1985], the recording of a tax lien notice filed with the Department [department] constitutes constructive notice of the existence of the lien to all consumers [purchasers] of the manufactured home who purchase it after the date of recordation of the lien and before the collector for the taxing unit files a notice canceling the tax lien.

{(b) If a tax lien filed with the department in accordance with this section ceases to exist, the collector for the taxing unit shall file a notice with the department stating that the lien no longer exists. Such notice shall be filed no later than ten (10) calendar days after payment of the taxes.}

(b) [(e)] A personal property tax lien may not be enforced against a manufactured home transferred to a *bona fide* [bona fide]

purchaser who does not have actual [constructive] notice of the existence of the lien.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503146

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 475-2206



## SUBCHAPTER H. TABLES AND FIGURES

### 10 TAC §80.240

The new section is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed new rule.

§80.240. Tables and Figures.

(a) Tables.

(1) Maximum Spacing for Diagonal Ties.

Figure: 10 TAC §80.240(a)(1)

(2) Minimum Number of Diagonal Ties.

Figure: 10 TAC §80.240(a)(2)

(3) Maximum Spacing for Diagonal Ties (Wind Zone II) per side of the Assembled Unit.

Figure: 10 TAC §80.240(a)(3)

(4) Bracket Installation--Maximum Centerline Wall Opening for Column Uplift Brackets.

Figure: 10 TAC §80.240(a)(4)

(5) Floor Connections--Wind Zone I and II.

Figure: 10 TAC §80.240(a)(5)

(6) Roof Connection--Fastener Type and Spacing.

Figure: 10 TAC §80.240(a)(6)

(7) Main Panel Box Feeder Conductor Sizes.

Figure: 10 TAC §80.240(a)(7)

(8) Footer Capacities.

Figure: 10 TAC §80.240(a)(8)

(9) Pier Loads without Perimeter Supports.

Figure: 10 TAC §80.240(a)(9)

(10) Pier Loads with Perimeter Supports.

Figure: 10 TAC §80.240(a)(10)

(11) Mating Line Column Loads.

Figure: 10 TAC §80.240(a)(11)

(12) Enforcement Matrix.  
Figure: 10 TAC §80.240(a)(12)

(b) Figures.

(1) Counties Located in Wind Zone II.  
Figure: 10 TAC §80.240(b)(1)

(2) Anchor Installation.  
Figure: 10 TAC §80.240(b)(2)

(3) Placement of Stabilizing Devices.  
Figure: 10 TAC §80.240(b)(3)

(4) Wind Zone I Installation (Single & Multi-Section).  
Figure: 10 TAC §80.240(b)(4)

(5) Diagonal Strap Placement for Piers Exceeding 36 in. in Height.  
Figure: 10 TAC §80.240(b)(5)

(6) Diagonal and Vertical Ties.  
Figure: 10 TAC §80.240(b)(6)

(7) Typical Installation Details.  
Figure: 10 TAC §80.240(b)(7)

(8) Anchor Span.  
Figure: 10 TAC §80.240(b)(8)

(9) Typical Longitudinal Stabilizing Device.  
Figure: 10 TAC §80.240(b)(9)

(10) Longitudinal Ties.  
Figure: 10 TAC §80.240(b)(10)

(11) Mating Line Surfaces.  
Figure: 10 TAC §80.240(b)(11)

(12) Floor Connections.  
Figure: 10 TAC §80.240(b)(12)

(13) Endwall Connections.  
Figure: 10 TAC §80.240(b)(13)

(14) Roof Connection.  
Figure: 10 TAC §80.240(b)(14)

(15) Exterior Roof Close Up.  
Figure: 10 TAC §80.240(b)(15)

(16) HVAC (Heat/Cooling) Duct Crossover.  
Figure: 10 TAC §80.240(b)(16)

(17) Multi-Section Water Crossover Connections.  
Figure: 10 TAC §80.240(b)(17)

(18) Drain, Waste and Vent Floor Piping System.  
Figure: 10 TAC §80.240(b)(18)

(19) Chassis Bonding.  
Figure: 10 TAC §80.240(b)(19)

(20) Electrical Crossover.  
Figure: 10 TAC §80.240(b)(20)

(21) Fuel Gas Pipe Crossover Connections.  
Figure: 10 TAC §80.240(b)(21)

(22) Footer Configurations.  
Figure: 10 TAC §80.240(b)(22)

(23) Pier Design (Single and Multi-Section Stack).  
Figure: 10 TAC §80.240(b)(23)

(24) Perimeter Pier Front & Side View.  
Figure: 10 TAC §80.240(b)(24)

(25) Typical Multi-Section Pier Layout.  
Figure: 10 TAC §80.240(b)(25)

(26) Typical Single Section Pier Layout.  
Figure: 10 TAC §80.240(b)(26)

(27) Determining Column Load and Marriage Line Elevation.  
Figure: 10 TAC §80.240(b)(27)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503147

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 475-2206



## SUBCHAPTER I. FORMS

### 10 TAC §80.260

The new section is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed new rule.

#### §80.260. Required and Optional Forms.

##### (a) Required Forms.

(1) Site Preparation Notice.  
Figure: 10 TAC §80.260(a)(1)

(2) Consumer Disclosure Statement.  
Figure: 10 TAC §80.260(a)(2)

(3) Consumer Protection Disclosure - Chattel Mortgage Transactions.  
Figure: 10 TAC §80.260(a)(3)

(4) Notice of Installation (Form T).  
Figure: 10 TAC §80.260(a)(4)

(5) Estimate for Reassigned Warranty Work.  
Figure: 10 TAC §80.260(a)(5)

(6) Application for Statement of Ownership and Location.  
Figure: 10 TAC §80.260(a)(6)

(7) Release or Foreclosure of Lien (Form B).  
Figure: 10 TAC §80.260(a)(7)

(8) Quick Processing Form.  
Figure: 10 TAC §80.260(a)(8)

(9) Form M.  
Figure: 10 TAC §80.260(a)(9)



(10) Affidavit of Fact for Right of Survivorship.  
Figure: 10 TAC §80.260(a)(10)

(11) Retailer/Broker Disclosure Statement.  
Figure: 10 TAC §80.260(a)(11)

(12) Warranty of Habitability.  
Figure: 10 TAC §80.260(a)(12)

(13) Continuous Manufactured Housing Surety Bond.  
Figure: 10 TAC §80.260(a)(13)

(14) Form required to record and release a tax lien.  
Figure: 10 TAC §80.260(a)(14)

(15) Required notice of intent to declare a home abandoned pursuant to §1201.217 of the Standards Act  
Figure: 10 TAC §80.260(a)(15)

(16) Manufacturer's Certificate of Origin.  
Figure: 10 TAC §80.260(a)(16)

(b) Optional Forms.

(1) Spanish Version of Consumer Disclosure Statement.  
Figure: 10 TAC §80.260(b)(1)

(2) Statement of No Unpaid Taxes.  
Figure: 10 TAC §80.260(b)(2)

(3) Notice of intent to acquire ownership of an abandoned manufactured home.  
Figure: 10 TAC §80.260(b)(3)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503148

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 475-2206



## CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department) proposes repeal of §§80.50 - 80.52, 80.63, 80.123, 80.124, 80.129, 80.134, 80.136, 80.137, 80.181, 80.182, 80.200, 80.202 - 80.204, and 80.206, 80.207, and 80.209. The repeals are necessary to remove unnecessary text, move text to more appropriate sections, or to propose a new rule to replace the repeal.

Section 80.50 - The rule is not necessary since the Wind Zone regulations are stated in the Standards Act.

Section 80.51 - Relocated to various sections in proposed revisions to §§80.53 and 80.54.

Section 80.52 - Clarifications are made in proposed revisions in §80.54 and the definition of Permanent Foundation that make this rule unnecessary. Also, the certification form is eliminated since it is not required that a home be on a permanent foundation to be treated as real property.

Section 80.63 - All matters are now appropriately addressed in §§80.54 and 80.62.

Section 80.123 - Repealing License Requirements rule to reorganize and propose as a new rule.

Section 80.124 - The rule is not necessary.

Section 80.129 - Proposing a new §80.129 and moving the previous text to §80.127 (Sanctions and Penalties) and the Enforcement Matrix to new Subchapter H (Tables and Figures).

Figure: 10 TAC §80.129(g) - Moved Enforcement Matrix to new §80.240(a)(12).

Section 80.134 - Relocated portions of the text to §80.121 (Retailer's Responsibilities) and deleted text that is no longer necessary.

Section 80.136 - Supporting documentation relating to a permanent foundation is no longer required and the closing requirements are clearly set forth in the statute.

Section 80.137 - Relocated subsection (b) and forms to new Subchapter I (Forms).

Figure: 10 TAC §80.137(a)(1) - Moved Notice of Installation (Form T) to new §80.260(a)(4).

Figure: 10 TAC §80.137(a)(2) - The Down Payment Verification Affidavit is deleted.

Figure: 10 TAC §80.137(a)(3) - Moved Estimate for Reassigned Warranty Work form to new §80.260(a)(5).

Section 80.181 - Proposing a new 80.181 rule and relocating necessary text in the repealed rule to §80.121(e) and forms to new Subchapter I (Forms).

Figure: 10 TAC §80.181(1) - Moved the Consumer Disclosure Statement form to new §80.260(a)(2).

Figure: 10 TAC §80.181(2) - Moved the Spanish version of the Consumer Disclosure Statement form to new §80.260(b)(1).

Section 80.182 - Relocated necessary text to §80.121(f) and forms to new Subchapter I (Forms).

Figure: 10 TAC §80.182(1) - Moved the 163 Disclosure form to new §80.260(a)(3).

Figure: 10 TAC §80.182(2) - Deleting the Spanish version of the 163 Disclosure form.

Section 80.200 - Deleted subsection (a) and relocated (b) to §80.121(a)(1)(L) (Retailer's Responsibilities).

Section 80.202 - Relocated fees to §80.20(j).

Section 80.203 - Relocated to §80.120 (Manufacturer's Responsibilities).

Section 80.204 - The Notice of Installation (Form T) is no longer filed with the Application for Statement of Ownership and Location.

Section 80.206 - The rule is no longer necessary.

Section 80.207 - The habitability inspection requirement for changes from real to personal property moved to §80.201 and habitability inspection requirements for converting business use and salvage homes to residential use are already set forth in §80.201.

Section 80.209 - Relocated forms to new Subchapter I (Forms).

Figure: 10 TAC §80.209(a) - Moved the Application for Statement of Ownership and Location form to new §80.260(a)(6).

Figure: 10 TAC §80.209(b) - Moved the Release or Foreclosure of Lien form to new §80.260(a)(7).

Timothy K. Irvine, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Irvine also has determined that for each year of the first five years the repeal is in effect the public benefit as a result of enforcing the repeal will be to eliminate unnecessary or redundant verbiage and to propose new rules and revisions that organize the rules by grouping in related subjects that are more logical. The repeal is expected to have no material economic costs to persons/businesses that are required to comply with the repeal as proposed. There are expected to be no fiscal implications for units of local government as a result of enforcing or administering the repeal.

Comments may be submitted to Mr. Timothy K. Irvine, Executive Director of the Manufactured Housing Division, of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at the following address [tirvine@tdhca.state.tx.us](mailto:tirvine@tdhca.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

## SUBCHAPTER D. STANDARDS AND REQUIREMENTS

### 10 TAC §§80.50 - 80.52, 80.63

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the repealed rules.

§80.50. *Wind Zone Regulations.*

§80.51. *Manufactured Home Installation Requirements.*

§80.52. *Permanent Foundation Criteria.*

§80.63. *Other Materials and Methods for Manufactured Homes.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503136

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 475-2206



## SUBCHAPTER E. GENERAL REQUIREMENTS

### 10 TAC §§80.123, 80.124, 80.129, 80.134, 80.136, 80.137

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the repealed rules.

§80.123. *License Requirements.*

§80.124. *Deposits and Down Payments.*

§80.129. *Determinations Regarding the Pursuit of Administrative Penalties and Enforcement Actions.*

§80.134. *Deceptive Practices.*

§80.136. *Homes Acquired on or after January 1, 2002.*

§80.137. *Required Forms.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503137

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 475-2206



## SUBCHAPTER F. CONSUMER NOTICE REQUIREMENTS

### 10 TAC §§80.181, §80.182

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the repealed rules.

§80.181. *Section 162 Notice.*

§80.182. *163 Disclosure.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503138

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 475-2206



## SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

### 10 TAC §§80.200, 80.202 - 80.204, 80.206, 80.207, 80.209

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the repealed rules.

§80.200. *Responsibility for Completion and Filing of an Application for a Statement of Ownership and Location.*

§80.202. *Fees for Title Documents.*

§80.203. *Manufacturer's Monthly Shipment Report.*

§80.204. *Installation Information.*

§80.206. *Assignment of Lien.*

§80.207. *Reinstatement of Canceled Documents of Title.*

§80.209. *Statement of Ownership and Location Forms.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503139

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 475-2206



## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

## CHAPTER 73. ELECTRICIANS

### 16 TAC §§73.10, 73.20 - 73.28, 73.40, 73.53, 73.60, 73.70, 73.80

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§73.10, 73.20 - 73.26, 73.40, 73.53, 73.60, 73.70, and 73.80 and new §73.27 and §73.28, regarding the electrical safety and licensing program.

The 79th Texas Legislature adopted House Bill 1317 which amended Occupations Code, Chapter 1305 in a number of areas. Most of the changes described below are proposed to facilitate administration of Chapter 1305 as amended.

Section 73.10, paragraphs (8) and (12) are amended to include entities since the statute was amended at §1305.001(12-a) to define persons as individuals.

Paragraphs (9), (10), (11), (15), and (16) were amended to provide that individual licensees may also provide services through an employing governmental entity to address a new exemption at §1305.003(d) for political subdivisions of this state.

Paragraph (9) was also amended to define a master electrician as a person working on behalf of an electrical sign contractor to recognize that a master electrician is now allowed to serve as the master for electrical sign contractors. §1305.153(b).

Paragraph (14) is amended to recognize that a master electrician may now supervise a journeyman sign electrician. §1305.153(b).

Paragraph (17) is amended to delete the reference to §1305.003. The exemption for maintenance work found at §1305.003(8) was amended to be an exemption for work performed by businesses. The definition is still needed to define work performed by maintenance electricians.

Paragraph (19) is amended to delete the reference to authorized representatives since §1305.003(19) is amended to include the same language as the rule except for the deleted reference.

New paragraph (20) is added to define electrical sign apprentices, a new term added to the Act at §1305.161(b).

New paragraph (21) is added to define the term "a principal place of business" which is added to an exemption for certain industrial plants at §1305.003(14).

New paragraph (22) is added to define the term "on-the-job training," which appears several times in the rules. The change reflects the language found in §12 of House Bill 1317, 79th Legislature, which refers to "on-the-job electrical experience."

Section 73.20(c) is amended to add the word "individual" to the requirement that all applicants must pass an examination. This is a clarifying amendment.

Section 73.21(a) is amended to add the word "individual" before the word "applicant" to clarify the section.

Section 73.21(b) is amended to reference House Bill 1317 which extended the period of time during which qualified applicants may obtain a license without passing an examination.

New §73.21(b)(2) is added to recognize new §1305.202(b), which provides that persons licensed by a municipality or regional licensing authority may obtain a state issued license if the municipality or authority ceases its licensing program.

Section 73.24 is amended by adding a new subsection (a) to address waiver of examination for persons holding a license in a state having a reciprocity agreement with Texas. This amendment is made to address authority granted by the original statute.

Section 73.24(b) (old subsection (a)) is amended to clarify the conditions under which the Executive Director may waive an examination requirement.

Section 73.24 is amended to add a new subsection (d) to establish by rule a new limitation on certain persons applying for a license without examination, based on licensure by a municipality or regional authority. House Bill 1317 at §12(2) provides that such persons may obtain a state license that is equivalent to the license issued by a municipality or region.

Section 73.24 is amended to add a new subsection (e) to address certain applicants for masters' licenses pursuant to provisions of House Bill 1317, §12(1).

Section 73.25(b) and (e) are amended to add the word individual in referring to continuing education requirements for licensees. This is a clarifying amendment.

Section 73.26 is amended by deleting subsection (d). The deleted section limited the effect of the rule to certain applications filed before May 31, 2005. House Bill 1317 at §12 directs the Commission to consider alternative documentation, the use of which is defined by the rule. With the deletion the rule remains effective.

New §73.27, Licensing Requirements--Temporary Apprentices, is added to establish a procedure for issuance of temporary apprentice licenses in response to §1305.161(c).

New §73.28, Licensing Requirements--Emergency Licenses, is added to establish procedures for issuance of emergency licenses in response to §1305.1615.

Section 73.53 is amended by deleting the word "individual" from the heading. The wording of the rule itself correctly addresses all licenses. This is a clarifying amendment.

Section 73.60(d)(1) is amended by deleting the word "individually" and replacing it with the word "alone" to allow the rule to address all licensees. This is a clarifying amendment.

Section 73.70(a) is amended to add the phrase "or employing governmental entity" to allow licensees employed by governmental entities to work other than through a licensed contractor. §1305.003(d).

Section 73.70(b), (c), and (i) are amended to delete the use of "he or she" to refer to a licensee. This is a clarifying amendment.

Section 73.70(k) is deleted. The original Act at §1305.101(2) provides that the version of the National Electric Code adopted by the Commission is the code for the state. The deleted language is in conflict with that provision.

Section 73.80(a)(9) is amended to change the electrical apprentice fee to \$20. Section 73.80(a) is amended by adding a new paragraph (10) to include electrical sign apprentices.

Section 73.80(b) is amended to reflect the change from a two-year to a one-year period for late renewal of a license.

Section 73.80(c)(2) is amended to change the duplicate license fee for an electrical apprentice to \$20. Section 73.80(c) is amended to add paragraph (3) to set a fee for a duplicate license for an electrical sign apprentice.

These rules are necessary to facilitate administration of statutory changes to clarify where needed.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments and new rules are in effect there will be minimal cost to state or local government as a result of enforcing or administering the amendments and new rules.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments and new rules are in effect, the public benefit will be that the rules are consistent with statutory amendments of the 79th Texas Legislature and they will more clearly address statutory provisions.

With the exception of a five dollar increase in the application fee for apprentices, the costs, if any, for small or micro-businesses to comply with these rules will flow from legislative changes, which the amendments merely implement. The application fee for apprentices is increased from \$15 to \$20 for the initial one-year registration and for each renewal thereafter. The fee is increased to cover the costs of providing temporary licenses that will allow qualified applicants who apply online or in person at the Austin office to receive a temporary license immediately to be followed within 21 days with a regular license.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: [whkuntz@license.state.tx.us](mailto:whkuntz@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rules are proposed under Texas Occupations Code, Chapters 51 and 1305, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the proposal.

#### *§73.10. Definitions.*

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) - (7) (No change.)

(8) Electrical Contractor--A person, or entity, licensed as an electrical contractor, that [who] is in the business of performing "Electrical Contracting" as defined by Texas Occupations Code, §1305.002(5).

(9) Master Electrician--An individual, licensed as a master electrician, who on behalf of an electrical contractor, electrical sign contractor, or employing governmental entity, performs "Electrical Work" as defined by Texas Occupations Code, §1305.002(11).

(10) Journeyman Electrician--An individual, licensed as a journeyman electrician, who works under the general supervision of a master electrician, on behalf of an electrical contractor, or employing governmental entity, while performing "Electrical Work" as defined by Texas Occupations Code, §1305.002(11).

(11) Electrical Apprentice--An individual, licensed as an apprentice who works under the on-site supervision of a master electrician, a journeyman electrician, or a residential wireman, on behalf of an electrical contractor, or employing governmental entity

performing "Electrical Work" as defined by Texas Occupations Code, §1305.002(11).

(12) Electrical Sign Contractor--A person, or entity, licensed as an electrical sign contractor, that [who] is in the business of performing "Electrical Sign Contracting" as defined by Texas Occupations Code, §1305.002(9).

(13) (No change.)

(14) Journeyman Sign Electrician--An individual, licensed as a journeyman sign electrician, who works under the general supervision of a master electrician or a master sign electrician, on behalf of an electrical sign contractor, while performing "Electrical Sign Work" as defined in paragraph (18) of this section.

(15) Residential Wireman--An individual, licensed as a residential wireman, who works under the general supervision of a master electrician, on behalf of an electrical contractor, or employing governmental entity, while performing electrical work that is limited to electrical installations in single family and multifamily dwellings not exceeding four stories, as defined by Texas Occupations Code, §1305.002(13).

(16) Maintenance Electrician--An individual, licensed as a maintenance electrician, who works under the general supervision of a master electrician, on behalf of an electrical contractor, or employing governmental entity and performs "Electrical Maintenance Work" as defined in paragraph (17) of this section.

(17) Electrical Maintenance Work--The replacement, or repair of existing electrical appurtenances, apparatus, equipment, machinery, or controls used in connection with the use of electrical energy in, on, outside, or attached to a building, residence, structure, property, or premises. All replacements or repairs must be of the same rating and type as the existing installation. No improvements may be made that are necessary to comply with applicable codes under Texas Occupations Code, Chapter 1305. Electrical maintenance work does not include the replacement of any raceways, conductors, disconnecting means, or service feeder components. It also does not include the installation of any new electrical appurtenances, apparatus, equipment, machinery, or controls beyond the scope of any existing electrical installation. [The term does not include work exempted by Texas Occupations Code, §1305.003.]

(18) (No change.)

(19) Work Involved in the Manufacture of Electrical Equipment--Work involved in the manufacture of electrical equipment includes on and off-site manufacture, commissioning, testing, calibration, coordination, troubleshooting, evaluation, repair or retrofits with components of the same ampacity, maintenance and servicing of electrical equipment within their enclosures performed by authorized employees of electrical equipment manufacturers [or their authorized representatives] and limited to the type of products they manufacture.

(20) Electrical Sign Apprentice--An individual, licensed as an electrical sign apprentice who works under the on-site supervision of a master electrician, a master sign electrician, or a journeyman sign electrician, on behalf of an electrical sign contractor performing "Electrical Sign Work" as defined by these rules.

(21) A Principal Place of Business--For purposes of these rules, a contractor has a principal place of business in another state or territory or foreign country if the contractor is doing business in Texas without complying with all applicable Texas statutes and the contractor conducts substantial business in another state, territory or country while business conducted by the contractor in Texas is minimal.

(22) On-the-job Training--Training or experience performing electrical work.

*§73.20. Licensing Requirements--Applicant and Experience Requirements.*

(a) An applicant for a license must submit the required fees with a completed application and the appropriate attachments:

(1) (No change.)

(2) Applicants for contractor's licenses must submit proof of general liability insurance and either workers' compensation insurance or a certificate of authority to self insure, or a statement that the applicant has elected not to obtain workers' compensation insurance pursuant to Subchapter A, Chapter 406, Labor Code, with the initial and renewal applications.

(b) (No change.)

(c) Except as provided by §73.24, each individual applicant must pass all parts of a Department accepted examination, and provide proof of a passing grade, before the applicant will be licensed. To be accepted, an examination must have been taken and passed no more than two years before the date of the application.

(d) For purposes of this chapter, 2,000 hours of on the job training shall equal one year of on the job training. On the job training must be established by letter(s) setting out dates of employment from persons who either employed or supervised the applicant, or as required by the application. Letters must include the name and license type of the supervising person.

(e) - (f) (No change.)

*§73.21. Licensing Requirements--Examinations.*

(a) To obtain by examination a license issued under this chapter, an individual applicant must successfully complete an examination approved by the Executive Director of the Texas Department of Licensing and Regulation.

(b) To obtain a license without examination, an applicant must either:

(1) file a completed application [must be filed on or before June 1, 2004] and the provisions of Section 12, House Bill 1317 of the 79th Legislative Session [in Section 3, House Bill 1487 of the 78th Legislative Session] and §73.24 must be met on or before December 31, 2005; or, [-]

(2) have been licensed for the preceding year by a municipality or regional licensing authority that has terminated its licensing program and have applied for a state issued license within ninety days of the date the program stopped issuing or renewing licenses.

*§73.22. Licensing Requirements--General.*

(a) - (c) (No change.)

(d) An electrical contractor, or an electrical sign contractor [contracting company] shall not use a license number that is not assigned to that contractor [company] by the Department.

(e) - (h) (No change.)

*§73.23. Licensing Requirements--Renewal.*

(a) Non-receipt of a license renewal notice from the Department does not exempt a person, or entity, from any requirements of this chapter.

(b) (No change.)

(c) Applications not filed by the expiration date are considered applications for late renewal [renewals] and are subject to late renewal fees.

(d) (No change.)

**§73.24. Licensing Requirements--Waiver of Examination Requirements.**

(a) An applicant who is licensed in another state that has entered into a reciprocity agreement with Texas regarding licensure of electricians, may obtain an equivalent license in Texas without passing the examination, provided that all other licensure requirements are met.

(b) ~~[(a)] The [Upon acceptable proof of an applicant's qualifications, the] Executive Director may waive the examination requirement [of §73.24] if, based upon acceptable proof, the Executive Director determines that the provisions of §73.21 are met [the application is filed on or before June 1, 2004].~~

(c) ~~[(b)]~~ Acceptable proof of an applicant's qualifications may include any or all of the following:

(1) a form prescribed by the Department that certifies completion of the required hours of on-the-job training under the supervision of a master electrician or master sign electrician as appropriate.

(2) a form prescribed by the Department and completed by the municipality or region in which the applicant was licensed for at least one year.

(3) a transcript, diploma or certificate evidencing graduation from an applicable apprenticeship program with the required number of hours of job-related education. The apprenticeship program must be approved and registered by the U.S. Department of Labor, Bureau of Apprenticeship and Training or other organizations recognized by the Department.

(d) An applicant applying for licensure in an area in which a municipal or regional licensing program exists and who works in the area, without passing an examination, may obtain a state issued license that is equivalent to the municipal or regional license held at the time of application.

(e) An applicant who lives and works in an area where no municipal or regional licensing program exists, without passing an examination, may obtain a state issued master electrician's license or a master sign electrician's license if the applicant has 20,000 hours of on-the-job electrical experience acquired while working in an area where no municipal or regional licensing program existed while under the supervision of a master electrician recognized by the department.

**§73.25. Continuing Education.**

(a) (No change.)

(b) To renew a license listed in Texas Occupations Code, §1305.168(a), an individual [a] licensee must complete four hours of continuing education in courses approved by the department.

(c) - (d) (No change.)

(e) For each annual renewal, an individual [a] licensee must complete a course, or combination of courses, dedicated to instruction in:

(1) - (2) (No change.)

(f) - (i) (No change.)

**§73.26. Documentation of Required On-The-Job Training.**

(a) - (c) (No change.)

~~[(d) The provisions of subsections (a)(2), (b), and (c) of this section will not apply to applications for electrical, or electrical sign licenses filed with the Department after May 31, 2005.]~~

**§73.27. Licensing Requirements--Temporary Apprentices.**

(a) An applicant for a license as an electrical apprentice or an electrical sign apprentice will be issued a temporary apprentice license, if the applicant:

(1) has not been convicted of a criminal offense; and,

(2) pays the required fee.

(b) A temporary license is valid for 21 days and may not be renewed.

**§73.28. Licensing Requirements--Emergency Licenses.**

(a) The executive director may grant emergency electrician licenses when:

(1) in response to an emergency as defined by Gov. Code, §418.004, a state of disaster is declared by;

(A) the Governor pursuant to Gov. Code, §418.014; or,

(B) the presiding officer of the governing body of a local governmental entity pursuant to Gov. Code, §418.108, and,

(2) the executive director determines that a sufficient number of persons holding electrical licenses recognized under Occupations Code, Chapter 1305 is not available to perform electrical work needed to timely respond to the disaster.

(b) To obtain an emergency license, an applicant must:

(1) be currently licensed by another state of the United States to perform electrical work in the licensing state; and,

(2) submit a completed application on a form acceptable to the department, along with appropriate attachments and the required fee.

(c) Emergency licenses will be classified as master, journeyman, residential wireman, or maintenance electrician and will be issued to applicants at a level equivalent to the license the applicant holds in another state.

(d) An emergency license will expire ninety days after issuance, and:

(1) is valid only in the disaster area designated by the governor, or in the jurisdiction of a local governmental entity declaring a disaster;

(2) is valid only during the time of a declared disaster and its recovery period, if any; and

(3) may be renewed for an additional ninety days if:

(A) the declared disaster and any applicable recovery period continues on the eightieth day of the emergency license;

(B) the executive director determines, at that time, that a sufficient number of persons holding electrical licenses recognized under Occupations Code, Chapter 1305 is not available to perform electrical work needed to timely respond to the disaster; and,

(C) submits a completed renewal application on a form acceptable to the department, along with appropriate attachments and the required fee.

(e) A person holding an emergency license must perform electrical work:

(1) on behalf of an electrical contractor, an electrical sign contractor, or an employing governmental entity; and,

(2) in compliance with all applicable statutes, administrative rules, and ordinances.

(f) The fee for emergency licenses will be the amount set out in §73.80 for the class of emergency license issued.

*§73.40. Insurance Requirements.*

(a) (No change.)

(b) A license applicant or licensee shall file with the Department a completed certificate of insurance or other evidence satisfactory to the Department when applying for ~~an~~ initial and renewal licenses and upon request of the Department.

(c) - (d) (No change.)

(e) Insurance must be obtained from an admitted company or an eligible surplus lines carrier, as defined in the Texas Insurance Code, Chapter 981 ~~[Article 1-14-2]~~, or other insurance companies that are rated by A.M. Best Company as B+ or higher.

*§73.53. ~~[Individual]~~ Licensees' Responsibilities.*

All licensees must perform non-exempt electrical work or non-exempt electrical sign work in compliance with applicable codes. The department will interpret applicable codes for purposes of enforcement of the Act.

*§73.60. Standards of Conduct for Licensee.*

(a) - (c) (No change.)

(d) *Specific Rules of Conduct.* A licensee shall not:

(1) participate, whether alone ~~[individually]~~ or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act, the rules, or the standards adopted by the Commission;

(2) - (4) (No change.)

*§73.70. Responsibility of Licensee--Standards of Conduct.*

(a) An individual licensee must provide all electrical work requiring a license through a licensed contractor, or employing governmental entity.

(b) The licensee shall accurately and truthfully represent to any prospective client or employer, the licensee's ~~[his or her]~~ capabilities and qualifications to perform the services to be rendered.

(c) The licensee shall not offer to perform, nor perform, technical services for which the licensee ~~[he or she]~~ is not qualified by education or experience, without securing the services of another who is qualified.

(d) (No change.)

(e) The licensee shall not agree to perform services if any significant financial or other interest exists that may be in conflict with:

(1) the ~~[The]~~ obligation to render a faithful discharge of such services; or

(2) would ~~[Would]~~ impair independent judgment in rendering such services.

(f) - (h) (No change.)

(i) The licensee shall not hold ~~[him or herself]~~ out as being engaged in partnership or association with any person unless a partnership or association exists in fact.

(j) (No change.)

~~[(k) In areas where no electrical code is adopted, the state approved code shall be followed by the licensee.]~~

*§73.80. Fees.*

(a) Application and renewal fees:

(1) - (8) (No change.)

(9) Electrical Apprentice--~~\$20~~ [\$15]

(10) Electrical Sign Apprentice--\$20

(b) Late Renewal Fees. Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

~~[(1) A person whose license has been expired for 90 days or less may renew the license by paying a late renewal fee equal to 1 and 1/2 times the normally required renewal fee.]~~

~~[(2) A person whose license has been expired for more than 90 days but less than two years may renew the license by paying a late renewal fee equal to two times the normally required renewal fee.]~~

~~[(3) A person paying a late renewal fee is not required to pay the normally required renewal fee.]~~

(c) Revised or duplicate license fees:

(1) (No change.)

(2) Electrical Apprentice--~~\$20~~ [\$15]

(3) Electrical Sign Apprentice--\$20

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 28, 2005.

TRD-200503100

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 463-7348

◆ ◆ ◆

## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 19 TAC §4.3

The Texas Higher Education Coordinating Board proposes an amendment to §4.3 concerning an excused absence from a public institution of higher education for a person called to active military service. The amendment is simultaneously being adopted on an emergency basis in this issue of the *Texas Register* under the provisions of House Bill 1630 of the 79th Texas Legislature, which added §51.9111 to the Texas Education Code and authorized the Board to implement changes by Fall semester, 2005. This amendment will provide a way for a student to be assured of

an excused absence and a reasonable amount of time to complete missed assignments and examinations, in order to be able to complete coursework left pending if the student is called to active military duty for a brief duration of service. A student called to active military duty as defined in this section would still be able to withdraw from coursework, but the change would provide for a student who chooses not to do so under these specific circumstances.

Dr. Carol Raney, Acting Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Raney has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the provision of a policy that promotes student persistence and success for a specific population of students. There is no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Carol Raney, Acting Assistant Commissioner for Academic Affairs and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711 or carol.raney@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority, §61.002, which establishes the Coordinating Board as an agency charged to provide leadership and coordination for the Texas higher education system, and Texas Education Code, §51.9111, which authorized the Coordinating Board to adopt rules concerning excused absences for military service.

The amendment affects Texas Education Code, §61.002.

#### §4.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (16) (No change.)

(17) Active military service--Active service in the armed forces of the United States or in the National Guard or the Texas State Guard.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503175

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2005

For further information, please call: (512) 427-6114



## 19 TAC §4.9

The Texas Higher Education Coordinating Board proposes new §4.9, concerning an excused absence from a public institution of higher education for a person called to active military service. The new section is simultaneously being adopted on an emergency basis in this issue of the *Texas Register* under the provisions of House Bill 1630 of the 79th Texas Legislature, which added §51.9111 to the Texas Education Code and authorized the Board to implement changes by Fall semester, 2005.

This new section will provide a way for a student to be assured of an excused absence and a reasonable amount of time to complete missed assignments and examinations, in order to be able to complete coursework left pending if the student is called to active military duty for a brief duration of service. A student called to active military duty as defined in this section would still be able to withdraw from coursework, but the new rule would provide for a student who chooses not to do so under these specific circumstances.

Dr. Carol Raney, Acting Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Raney has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the provision of a policy that promotes student persistence and success for a specific population of students. There is no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Carol Raney, Acting Assistant Commissioner for Academic Affairs and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711 or carol.raney@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority, §61.002, which establishes the Coordinating Board as an agency charged to provide leadership and coordination for the Texas higher education system, and Texas Education Code, §51.9111, which authorized the Coordinating Board to adopt rules concerning excused absences for military service.

The new section affects Texas Education Code, §61.002.

#### §4.9. Excused Absence for a Person Called to Active Military Service.

(a) Upon notice from a student required to participate in active military service, an institution shall excuse a student from attending classes or engaging in other required activities, including examinations.

(b) A student shall not be penalized for an absence which is excused under this subsection and shall be allowed to complete an assignment or take an examination from which the student is excused within a reasonable time after the absence.

(c) Each institution shall adopt a policy under this subsection which includes:

(1) the retention of a student's course work completed during the portion of the course prior to the student being called to active military service;



(2) the course syllabus or other instructional plan, so that the student will be able to complete the course without prejudice and under the same course requirements that were in effect when the student enrolled in the course;

(3) a definition of a reasonable time after the absence for the completion of assignments and examinations;

(4) procedures for failure of a student to satisfactorily complete the assignment or examination within a reasonable time after the absence; and

(5) an institutional dispute resolution process regarding the policy.

(d) The maximum period for which a student may be excused under this section shall be no more than 25% (twenty-five percent) of the total number of class meetings (not including the final examination period) for the specific course or courses in which the student is currently enrolled at the beginning of the period of active military service.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503177

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2005

For further information, please call: (512) 427-6114



## CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND/OR HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

### SUBCHAPTER B. ROLE AND MISSION, TABLES OF PROGRAMS, COURSE INVENTORIES

#### 19 TAC §5.24

The Texas Higher Education Coordinating Board proposes amendments to §5.24, concerning Criteria and Approval of Mission Statements and Tables of Programs.

Specifically, these amendments will add eight criteria that the Coordinating Board will consider in granting preliminary authority for doctoral programs.

Dr. James (Kal) Kallison, Acting Deputy Assistant Commissioner has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Kallison has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the development of high quality doctoral programs. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to James (Kal) Kallison, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711-2788, or by e-mail to Kal.Kallison@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority and §61.002, which establishes the Coordinating Board as an agency charged to provide leadership and coordination for the Texas higher education system, and §61.051 which charges the Coordinating Board to review the table of programs of public institutions of higher education.

The amendments affect Texas Education Code, §61.002.

#### *§5.24. Criteria and Approval of Mission Statements and Tables of Programs.*

(a) In reviewing a request for preliminary authority to add a program to the institution's Table of Programs, [~~Criteria: In reviewing an institution's request for additions to its Table of Programs for preliminary authority,~~] the Board shall consider:

(1) a [the] demonstrated need for a future program in terms of present and future vocational needs of the state and the nation,

(2) - (4) (No change.)

(b) In reviewing a request for preliminary authority to add a doctoral program to the institution's Table of Programs, the Board shall consider the criteria set out in subsection (a) of this section and the following additional criteria:

(1) a demonstrated state or national unmet need for doctoral graduates in the field, or an unmet need for a doctoral program with a unique approach to the field;

(2) evidence that existing doctoral programs in the state cannot accommodate additional students, or that expanding existing programs is not feasible or would not best serve the state;

(3) if appropriate to its mission, the institution has self-sustaining baccalaureate- and master's-level programs in the field and/or programs in related and supporting areas;

(4) the program has the potential to obtain state or national prominence and the institution has the demonstrable capacity, or is uniquely suited, to offer the program and achieve that targeted prominence;

(5) demonstrated current excellence of the institution's existing undergraduate and graduate degree programs and how this excellence shall be maintained with the development and addition of a high quality doctoral program; measures of excellence include the number of graduates and graduation rates that match or exceed those at peer institutions;

(6) placement for graduates of the institution's current doctoral programs comparable to peer group placement rates;

(7) how the program will address Closing The Gaps by 2015; and

(8) institutional resources to develop and sustain a high-quality program.

(c) [~~(b)~~] Review and Approval Process.

(1) As provided by Texas Education Code, §61.051(e), at least every four years the Board shall review the role and mission statements, the table of programs and all degree and certificate programs offered by each public senior university or health related institution.

Requests for preliminary authority for new degree programs shall be presented as part of this review. The review shall include the participation of the institution's board of regents.

(2) The review process shall be determined by the Commissioner, but shall include a review of low-producing degree programs at the institution.

(3) The Board shall approve or re-approve the mission statement and table of programs of each institution following the review described in paragraph (1) of this subsection. Each institution shall be given an opportunity to be heard by the Board about these matters.

(4) Outside the normal review process described in paragraph (1) of this subsection, an institution may request of the Board an amendment to its authorized role and mission and/or preliminary authority for additional degree programs at any time the Commissioner determines that compelling circumstances warrant.

(5) After approval or re-approval, requests for new programs and administrative changes shall be considered in the context of the approved role and mission for the institution.

(6) The Commissioner may approve minor changes to the mission statement or table of programs of an institution during the period between the reviews referenced in paragraph (1) of this subsection

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503179

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2005

For further information, please call: (512) 427-6114



## CHAPTER 21. STUDENT SERVICES

### SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

#### 19 TAC §21.122, §21.124

The Texas Higher Education Coordinating Board proposes amendments to §21.122 and §21.124, concerning initial eligibility for the Texas B-On-Time Loan Program. The proposed amendments extend the residency requirement in the Texas B-On-Time Loan Program to include military dependents that are entitled to pay resident tuition rates. Currently, loan eligibility is limited to students who are Texas residents and who graduated from a Texas high school. The proposed amendments provide that a military dependent who graduated from a Department of Defense high school not earlier than the 2002 - 2003 school year and who, at the time of graduation, was a dependent of a member of the U.S. armed forces, is eligible for the Texas B-On-Time Loan.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amended sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the sections.

Ms. Hollis has also determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of these amendments will be increased opportunities to attain a higher education through participation in the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §§56.451 - 56.465, which provides the Coordinating Board with the authority to establish procedures to administer this program; the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules to effectuate the provisions of the Texas Education Code; and §54.053, which states that the governing board of each institution is required to charge a nonresident tuition fee is subject to the rules, regulations and interpretations issued by the Coordinating Board.

The amendments affect Texas Education Code, §§56.451 - 56.465.

#### §21.122. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (4) (No change.)

(5) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determining Residence Status). Nonresident students eligible to pay resident tuition rates are not included unless they qualify as eligible nonresidents under §21.124(a)(1) of this title (concerning Initial Eligibility for Loans).

#### §21.124. Initial Eligibility for Loans.

(a) The Commissioner may authorize Texas B-On-Time Loans to students at any eligible institution which certifies that the student:

(1) is a resident of Texas as defined in these rules or beginning with the 2005 - 2006 academic year, be entitled, as a child of a member of the armed forces of the United States, to pay tuition at the rate provided for residents of this state under Texas Education Code §54.058; and

(2) meets one of the following academic requirements:

(A) graduated not earlier than the 2002 - 2003 school year under the Recommended or Advanced High School Program from a public or accredited private high school in Texas [or received an associate degree from an eligible institution not earlier than May 1, 2005];

(B) beginning with the 2005 - 2006 academic year, graduated not earlier than the 2002 - 2003 school year from a high school operated by the United States Department of Defense and at the time of graduation was a dependent child of a member of the armed forces of the United States; or

(C) received an associate degree from an eligible institution not earlier than May 1, 2005;

(3) - (5) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503169

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2005

For further information, please call: (512) 427-6114



## SUBCHAPTER CC. EARLY HIGH SCHOOL GRADUATION SCHOLARSHIP PROGRAM

### 19 TAC §§21.953, 21.954, 21.956, 21.959

The Texas Higher Education Coordinating Board proposes amendments to §§21.953, 21.954, 21.956 and 21.959 concerning the Early High School Graduation Scholarship Program. Senate Bill 1227, 79th Legislature, Regular Session, amended Texas Education Code §56.203 so that students who were on track to graduate in keeping with Early High School Graduation Scholarship requirements in 2003 (when requirements were changed), may be grandfathered into the program if they graduated prior to September 1, 2005 while meeting the old program requirements. Since 2003, one of the requirements for a scholarship through the program is the completion of the Recommended High School Program or Distinguished High School Program. Prior to that time, any student who graduated within 36 months of the start of ninth grade could receive an award, regardless of the conditions of their graduation. The amendments reflect the extension of eligibility to these students.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendments are in effect there are no fiscal implications for these amendments because the program is funded through the Foundation Program. The program is funded through the savings generated from students graduating early. The savings per student more than offset the costs of awarding the scholarships.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit would be that students who graduated between September 1, 2003, and September 1, 2005, would receive the awards they anticipated when they enrolled for the 2002 - 2003 academic year. The change in the statute in 2003 was unexpected, and many high school students, in good faith, had taken steps to graduate under the requirements that existed prior to September 1, 2003. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §56.209, which states that the Coordinating Board is authorized to adopt rules to administer this section.

The amendments affect the Texas Education Code, §§56.202 - 56.209.

#### §21.953. *Eligible Students.*

(a) To receive an award through the Early High School Graduation Scholarship Program, a student who graduated from high school before September 1, 2003 or who graduated between September 1, 2003 and September 1, 2005, under conditions listed in subsection (b) of this section must:

(1) - (4) (No change.)

(b) A student who graduated between September 1, 2003 and September 1, 2005, without completing the Recommended or Advanced High School Program, may receive an award through the Early High School Graduation Scholarship as it existed on August 31, 2003, if the student's high school counselor provides the Board a certified statement that the student was on track as of August 31, 2003, to graduate in accordance with Early High School Graduation Scholarship program requirements in place at that time, and the student graduated meeting requirements listed in subsection (a) this section.

(c) [(b)] To receive an award through the Early High School Graduation Scholarship Program, a student other than those described in subsection (b) of this section who graduated from high school after September 1, 2003 must:

(1) be a resident of Texas;

(2) have attended high school only in Texas;

(3) have successfully completed the Recommended or Advanced High School Program established under Texas Education Code, §28.025, unless the principal or other authorized representative of the student's high school indicates on the student's transcript and exemption program application that the courses in the Recommended or Advanced High School Program which the student did not complete were unavailable to the student at the appropriate time in his or her high school career because of:

(A) course scheduling;

(B) lack of enrollment capacity; or

(C) another cause not within the person's control, an explanation for which is provided on the transcript by the official;

(4) have graduated:

(A) in not more than 41 consecutive months, in which case the student must provide written approval of a parent or person standing in parental relation to the student; or

(B) in not more than 46 consecutive months, if the student graduated with at least 30 hours of college credit.

(5) A student's eligibility to receive a tuition credit under the Early High School Graduation Scholarship Program begins with the first regular semester or term following the student's graduation, exclusive of summer sessions that immediately follow the student's graduation. A student's eligibility to receive a tuition credit under the program ends six years after it begins, unless the student seeks and is granted an extension under §21.960 of this title (relating to Hardship Extensions).

#### §21.954. *The Application and Awarding Process.*

(a) (No change.)

(b) The application has three parts. It must be completed and signed by the high school counselor or principal on behalf of the student applicant.

(1) Parts I and III are to be completed for all applicants who graduated prior to September 1, 2003, and students who graduated between September 1, 2003 and September 1, 2005, in accordance with §21.953(b) of this title (relating to Eligible Students).

(2) (No change.)

(c) High school counselors or principals are to send the completed and signed applications to the Board for processing. If the application is for a student who qualifies for an award in accordance with §21.953(b) of this title, the application must be accompanied by a certified statement from the high school counselor, on high school letterhead, confirming the student was on track on August 31, 2003, to graduate under the provisions of the Early High School Graduation Scholarship Program as it existed at that time.

(d) - (g) (No change.)

§21.956. *Award Amounts and Processing Cycle.*

(a) Amounts for students graduating prior to September 1, 2003 or between September 1, 2003 and September 1, 2005, in accordance with conditions outlined in §21.953(b) of this title (relating to Eligible Students).

(1) - (3) (No change.)

(b) For students whose graduation date is after September 1, 2003, other than those graduating under the conditions outlined in §21.953(b) of this title:

(1) - (2) (No change.)

(c) (No change.)

§21.959. *Hardship Provisions.*

An otherwise eligible student who graduated from high school on or after September 1, 2003, other than those who graduated in accordance with the requirements outlined in §21.953(b) of this title (relating to Eligible Students), and who is unable to use his or her scholarship within the allotted six years may petition the Board for an extension. Such extensions, not to exceed one year, may be granted on the basis of hardships or other good causes, including but not limited to:

(1) - (2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503171

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2005

For further information, please call: (512) 427-6114



## SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

### 19 TAC §21.1083

The Texas Higher Education Coordinating Board proposes an amendment to §21.1083, concerning the Educational Aide Exemption Program. Senate Bill 1227, 79th Legislature, Regular Session, amended §54.214 of the Texas Education Code regarding the requirement of employment as an educational aide one of the past five years to students who are applying for their first

exemptions. Prior to this amendment, an individual would have had to have been employed as an aide one of the past five years in order to qualify for an exemption. Therefore, students who entered the program on the third or fourth year after such employment would lose eligibility to continue in the program once that five-year deadline was reached. They would have to work for a year as an aide in order to re-establish eligibility for the exemption. Students, once having met the employment requirement, may continue to pursue their teaching credentials.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amended section.

Ms. Hollis has also determined that for each year of the first five years the amendment is in effect the public benefit would be that individuals would be able to become certified as teachers earlier. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §56.214, which states that the Coordinating Board is authorized to adopt rules to implement this section.

The amendment affects the Texas Education Code, §54.214.

§21.1083. *Eligible Students.*

To receive an award through the Educational Aide Exemption Program, a student must:

(1) (No change.)

(2) have at least one school year of experience as an educational aide during the five years preceding the term or semester for which the student is awarded his or her initial [receives the] exemption;

(3) - (7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503173

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2005

For further information, please call: (512) 427-6114



## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 97. PLANNING AND ACCOUNTABILITY

#### SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

The Texas Education Agency (TEA) proposes amendment to §97.1001 and repeal of §97.1002 and §97.1007, concerning accountability. The proposed amendment to §97.1001 would describe the state accountability rating system and adopt applicable excerpts of the *2005 Accountability Manual*, dated June 2005. The proposed repeal of §97.1002 would repeal the adoption by reference of *Sections I-VI and VIII* of the *2004 Accountability Manual*, dated July 2004. The proposed repeal of §97.1007 would repeal the adoption by reference of the *2002 Alternative Education Accountability Manual*, dated July 2001, and amended by an Addendum, dated March 28, 2002.

Legal counsel with the TEA has recommended that the procedures for issuing accountability ratings for public school districts and campuses be adopted as part of the *Texas Administrative Code*. This decision was made in 2000 given a court decision challenging state agency decision making via administrative letter/publications. Given the statewide application of the accountability rating process and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules in this area, portions of each annual accountability manual have been adopted since 2000. The accountability system evolves from year to year so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree over those applied in the prior year. The intention is to annually update 19 TAC §97.1001 to refer to the most recently published accountability manual.

The proposed amendment to 19 TAC §97.1001 would describe the state accountability rating system and adopt excerpts of the *2005 Accountability Manual*, dated June 2005, into rule. The excerpts, *Chapters 2-6, 9, 11-13, 16, and 17* of the *2005 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings, both standard and alternative education accountability (AEA), for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine Gold Performance Acknowledgment (GPA) on additional indicators for Texas public school districts and campuses. Also specified in *Chapters 2-6, 9, 11-13, 16, and 17* of the *2005 Accountability Manual* are procedures for submitting an appeal. The TEA will issue accountability ratings under the procedures specified in the *2005 Accountability Manual* in August 2005. Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.074 and §39.075. The title of §97.1001 would also change from "Annual Accountability Standards" to "Accountability Rating System."

In 2005, campuses and districts will be evaluated using four base indicators: Texas Assessment of Knowledge and Skills (TAKS) results, completion rates, annual dropout rates, and student performance on the State Developed Alternative Assessment (SDAA) II. In 2005, the GPA system will award acknowledgment on 13 separate indicators to districts and campuses rated *Academically Acceptable* or higher: Attendance Rate for Grades 1-12; Advanced Academic Course Completion; Advanced Placement/ International Baccalaureate Examination Results; College Admissions Test Results; Commended Performance on Reading/English Language Arts (ELA), Mathematics, Writing, Science and/or Social Studies; TAAS/TASP Equivalency; Recommended High School Program Participation; and Comparable Improvement on Reading/ELA and Mathematics.

The proposed repeal of 19 TAC §97.1002 is due to combining language from the current 19 TAC §97.1002 into the amended

19 TAC §97.1001. Specifically, the language to adopt excerpts of the *2005 Accountability Manual* would be moved to 19 TAC §97.1001; therefore, 19 TAC §97.1002 is no longer needed.

The proposed repeal of 19 TAC §97.1007 is necessary because the *2005 Accountability Manual* addresses both standard and AEA procedures. There is no longer a separate manual for AEA procedures. Chapters 9 and 11-13 of the 2005 manual address the indicators, standards, and procedures used to determine AEA ratings for campuses and districts evaluated under AEA procedures. Because these chapters would be adopted into rule with the amended 19 TAC §97.1001, there is no need for 19 TAC §97.1007.

Criss Cloudt, associate commissioner for accountability and data quality, has determined that for the first five- year period the amendment and repeals are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the amendment and repeals.

Dr. Cloudt has determined that for each year of the first five years the amendment and repeals are in effect the public benefit anticipated as a result of enforcing the section will be to continue to inform the public of the existence of annual manuals specifying rating procedures for the public schools by including this rule in the *Texas Administrative Code*. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment and repeals.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment and repeals submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

#### 19 TAC §97.1001

*(Editor's note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001 is not included in the print version of the Texas Register. The figure is available in the on-line issue of the August 12, 2005, issue of the Texas Register.)*

The amendment is proposed under the Texas Education Code (TEC), §§39.051(c)-(d), 39.072(c), 39.0721, 39.073, and 29.081(e), which authorize the commissioner of education to specify the indicators, standards, and procedures used to determine standard accountability ratings and alternative education accountability ratings and to determine acknowledgment on additional indicators.

The amendment implements the Texas Education Code, §§39.051(c)-(d), 39.072(c), 39.0721, 39.073, and 29.081(e).

§97.1001. [Annual] Accountability Rating System [Standards].

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §39.051(c) and (d), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings under both standard and alternative education accountability (AEA) procedures [These rating standards] will be annually published in official Texas Education Agency [(TEA)]

publications. These publications will be widely disseminated and cover the following procedures:

- (1) indicators, standards, and procedures used to determine district ratings;
- (2) indicators, standards, and procedures used to determine campus ratings;
- (3) indicators, standards, and procedures used to determine acknowledgment on Additional Indicators; and
- (4) procedures for submitting a rating appeal ~~;~~ and
- ~~[(5) system safeguards analyses used to assess the integrity of the accountability system.]~~

(b) The standard and alternative procedures by which districts, campuses, and charter schools are rated and acknowledged for 2005 are based upon specific criteria and calculations, which are described in excerpted sections of the 2005 Accountability Manual, dated June 2005, provided in this subsection.  
Figure: 19 TAC §97.1001(b)

(c) ~~[(b)]~~ Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.074 and §39.075.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner of education and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for school years prior to 2005-2006 remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.  
TRD-200503120  
Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Earliest possible date of adoption: September 11, 2005  
For further information, please call: (512) 475-1497

## 19 TAC §97.1002, §97.1007

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the Texas Education Code (TEC), §§39.051(c) - (d), 39.072(c), 39.0721, 39.073, and 29.081(e), which authorize the commissioner of education to specify the indicators, standards, and procedures used to determine standard accountability ratings and alternative education accountability ratings and to determine acknowledgment on additional indicators.

The repeals implement the Texas Education Code, §§39.051(c) - (d), 39.072(c), 39.0721, 39.073, and 29.081(e).

§97.1002. *Adoption by Reference: Standard Procedures.*

§97.1007. *Adoption by Reference: Alternative Education Procedures.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503121

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 475-1497

## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 9. TITLE INSURANCE

The Texas Department of Insurance proposes amendments to §9.1 and §9.401 which concern the adoption by reference of certain amendments to the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (Basic Manual) and to the Texas Title Insurance Statistical Plan (Statistical Plan). The proposed amendments to §9.1 and §9.401 revise the date of the amended Basic Manual and the Statistical Plan. The amendments to the Basic Manual and Statistical Plan, which the proposed amended sections will adopt by reference were considered at the rulemaking phase of the 2004 Texas Title Insurance Biennial Hearing. Adopting new rules and forms and modifying or replacing currently existing rules and forms in the Basic Manual and Statistical Plan facilitate the administration and regulation of title insurance in this state. The proposed amendments to the Basic Manual and Statistical Plan will clarify and standardize the rules and forms regulating the writing and the business of title insurance in the State of Texas. The proposed amendments to the Basic Manual and Statistical Plan are identified by item number and are a republication of items published for consideration at the 2004 Texas Title Insurance Biennial Hearing, Rulemaking Phase, Docket Number 2600, (rulemaking hearing), held on December 15, 2004, together with proposed amendments and typographical and formatting changes to the items. Republication is necessary to incorporate these items into the Basic Manual and Statistical Plan, to give notice of the changes to the various proposed items, and to give notice of the decision not to adopt Items 2004-13, 2004-16, 2004-17, 2004-19, 2004-27, 2004-28, and 2004-32, which decision is set forth in a separate Commissioner's Order. The republication is also necessary to conclude Docket Number 2599 which involved a petition and request to withdraw, amend, and/or modify Procedural Rule P-53, the anti-rebating rule adopted by the Commissioner effective April 1, 2004. By agreement of the petitioner and all participants in the 2004 Texas Title Insurance Biennial Hearing, the petition was consolidated into the 2004 biennial rulemaking hearing.

The items which are the subject of this proposal are as follows:

The proposals generally relate to: clean up and clarification of insuring forms and procedural rules, new or amended forms and procedural rules to conform to American Land Title Associate

forms, updates and modernization of certain administrative rules, definitions, and reporting forms in the Basic Manual, and revisions to the rebating and discounts procedural rule, P-53, resulting from legislation by the 79th Legislature. House Bill (HB) 2565 amended §2502.055 of the Texas Title Insurance Act to define four specific activities that are not rebating activities and to provide a definition of "market rate." Other activities not defined or identified by HB 2565 may be violations of the Texas Title Insurance Act and continue to be prohibited. The proposed revisions to P-53 continue to prohibit promotional and educational activities that are conditioned on the referral of title insurance business. The department has made corrective and clarifying changes to certain of these items, has added the words "if any" to the references to "premium" in the procedural rules, and has assigned form and rule numbers to each item. A brief description of each item follows its listing:

Item 2004-1 - Submission to amend the Limited Pre-Foreclosure Policy Form T-40 to change the number of the form.

Item 2004-2 - Submission to amend the Limited Pre-Foreclosure Policy Down Date Endorsement Form T-41 to change the number of the form and make other conforming amendments.

Item 2004-3 - Submission to amend Procedural Rule P-43 to make conforming changes based on amendments to the Limited Pre-Foreclosure Policy and Limited Pre-Foreclosure Policy Down Date Endorsement.

Item 2004-4 - Submission to amend the Verification of Services Rendered Form T-00 by updating and clarifying the form to comply with new and existing reporting requirements.

Item 2004-5 - Submission to amend the Endorsement Instructions in Section II of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas and Procedural Rule P-8 to allow for issuance or affirmation of coverage under Forms T-19 or T-19.1 upon completion of contemplated improvements.

Item 2004-6 - Submission to adopt a new Procedural Rule P-59 regarding recodification of the Texas Insurance Code and the reconciliation of references.

Item 2004-7 - Submission to amend the First Loss Endorsement Form T-14 to conform to a new American Land Title Association form and to eliminate the 10% threshold loss requirement.

Item 2004-8 - Submission to adopt a new Assignment of Rents/Leases Endorsement (Form T-27) to insure that the assignment of rents or leases was properly executed and that no existing prior assignment, unless excepted, appears in the public records.

Item 2004-9 - Submission to adopt a new Procedural Rule (P-60) for the proposed new Assignment of Rents/Leases Endorsement.

Item 2004-10 - Submission to repeal the Adjustable Mortgage Loan Endorsement Form T-33 and adopt a new Variable Rate Mortgage Endorsement Form T-33 and adopt a new Variable Rate Mortgage - Negative Amortization Endorsement Form T-33.1 to conform to American Land Title Association forms.

Item 2004-11 - Submission to amend Procedural Rule P-9 to conform to the issuance of the proposed new Variable Rate Mortgage - Negative Amortization Endorsement.

Item 2004-12 - Submission to amend the Texas Short Form Residential Mortgagee Policy - One-to-Four Family Form T-2R to conform to the issuance of the proposed new variable rate mortgage endorsements and other endorsements.

Item 2004-14 - Submission to adopt a new Condominium Endorsement (Form T-28) in accord with an American Land Title Association endorsement.

Item 2004-15 - Submission to amend Procedural Rule P-9 to add a new subparagraph b (15) to conform to the issuance of the proposed new Condominium Endorsement form.

Item 2004-18 - Submission to withdraw certain Bulletins in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

Item 2004-20 - Submission to amend Procedural Rule P-16, Mortgagee Title Policy Binder on Interim Construction Loan (Interim Binder) to re-define situations in which an Interim Construction Binder may be issued.

Item 2004-21 - Submission to adopt a new Texas Master Indemnity Agreement (Form T-29) that will provide a standard master indemnity to address the most often encountered potential defects, such as unreleased liens, thus relieving an underwriter from executing separate indemnity letters on a transaction by transaction basis. Separate indemnity letters will still be required as to potential defects that are not covered by the terms of the standard promulgated master indemnity agreement.

Item 2004-22 - Submission to amend Procedural Rule P-11 to conform to the proposed new Texas Master Indemnity Agreement form.

Item 2004-23 - Submission to amend the Texas Title Insurance Statistical Plan. This agenda item has been combined with agenda item 2004-43 in this proposal.

Item 2004-24 - Submission to amend Administrative Rule L-1, Title Insurance Agent, in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

Item 2004-25 - Submission to amend Administrative Rule L-2, Title Insurance Escrow Officer, in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

Item 2004-26 - Submission to amend Procedural Rule P-58, Report on Directly Issued Policy to clarify that the reporting of gross premium is for policy and all endorsements.

Item 2004-29 - Submission regarding the exceptions from coverage in the forms of title insurance policies as they relate to "filled-in lands." The department will not go forward with this submission at this time but will continue to work with interested parties in revising this submission for further proposal at a later date.

The department has combined Item 2004-30 - Submission to withdraw Procedural Rule P-53 of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas, amended by its submitter to request a modification of the current P-53, and Item 2004-31 - Submission to amend Procedural Rule P-53 of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas regarding prohibitions of rebates and discounts and specifying parameters of allowed activities.

The department proposes to amend and revise P-53 to conform to the amendment by HB 2565, 79th Legislature, Regular

Session, to Insurance Code §2502.055 regarding certain promotional and educational activities that are statutorily permitted and to make additional clarifying and formatting changes. The department has also added a termination date to P-53. The newly amended statute is self-executing and enforceable as written. The department notes that promotional activities engaged in by a person on the condition of referral of title insurance business remains a violation of the statute, and the department will also scrutinize promotional activities that are clearly excessive or beyond what is considered reasonable in accord with the new wording of the statute. The department will continue to gather information and collect data on promotional expenditures, including types and amounts, in furtherance of its statutory requirement to make recommendations to the legislature to improve the efficiency and effective regulation of title insurance business in Texas. Additionally, the department may make further exploration of rebating issues in other forums to better address continuing issues related to improper rebating and improper promotional activities.

Item 2004-33 - Submission to amend Procedural Rule P-1. Definitions, aa. Directly Issued Policy and cc. Commitment for Title Insurance.

Item 2004-34 - Submission to amend Minimum Standards, Specific Instructions and Report Forms for Audit of Trust Funds Required of Texas Title Insurance Agents, Direct Operations, Title Attorneys and Attorneys Licensed as Escrow Officers.

Item 2004-35 - Submission to repeal the existing and adopt a new Policy Guaranty Remittance Form (T-G1) in Section V of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

Item 2004-36 - Submission to amend Procedural Rule P-28, Requirements for Continuing Education for Title Agents and Escrow Officers.

Item 2004-37 - Submission to adopt a new procedural rule regarding persons or entities using the word "Title" in the name of their businesses. The department has withdrawn this item in light of existing statutory prohibitions against false information and advertising.

Item 2004-38 - Submission to amend Section VI, Administrative Rules of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

Item 2004-39 - Submission to adopt a new procedural rule regarding the timely issuance of title policies.

Item 2004-40 - Submission to adopt a new procedural rule regarding the licensing and location of title agents and direct operations. The department has added additional clarifying language resulting from input at the rulemaking hearing.

Item 2004-41 - Submission to amend Mortgage Title Policy Binder on Interim Construction Loan Form T-13 to clarify number references in response to inquiries concerning what number to include on the binder.

Item 2004-42 - Submission to amend Procedural Rule P-21, Additional Requirements for Contents of Commitment for Title Insurance to conform this procedural rule with the Commitment for Title Insurance.

Item 2004-43 - Submission to amend the Texas Title Insurance Statistical Plan to update references with conforming changes from the 2004 rulemaking hearing.

The department has filed a copy of each of the proposed items with the Secretary of State's Texas Register section. Persons desiring copies of the proposed items can obtain them from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. To request copies, please contact Sylvia Gutierrez at (512) 463-6327.

Robert R. Carter, Jr., deputy commissioner for the title division, has determined that, for each year of the first five years the amendments are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the amendments. Mr. Carter has also determined that there will be no measurable effect on local employment or the local economy.

Mr. Carter has also determined that for each year of the first five years the amendments are in effect there are a number of public benefits anticipated as a result of the amendments to the Basic Manual and Statistical Plan. Providing more uniform endorsements for mortgagee policies will allow for more efficient closing of transactions. The updating and revising of the administrative rules, definitions, reporting forms, and Statistical Plan, allow for consistent administration, facilitate the efficiencies of the department, and the closing of title transactions. The proposals adapt the Basic Manual to changing business practices. Revising Procedural Rule P-53 regarding rebating and discounts will conform the rule with the anti-rebating statute, as amended by the 79th Legislature, Regular Session, in the Texas Title Insurance Act (Insurance Code §§2502.051 - 2502.056) and will allow self-executing statutory direction to the public and the title industry as well as fostering the department's data collection initiatives to make further legislative recommendations on what are promotional expenditures. The new and updated promulgated forms will impose no additional regulatory costs on companies participating in the title insurance market, and the costs of reproducing such forms, estimated to be no more than \$.15 per form for the cost of a photocopy, should be fully compensated by the existing premium schedule. As to all the proposals, the department anticipates no differential impact between small, large, and micro-businesses. The cost per hour of labor should not vary between small, large, and micro-businesses. Further, it is neither legal nor feasible to exempt small or micro-businesses or to waive compliance considering the purpose of the efficient regulation of title insurance for which the amendments are to be adopted and which forms are promulgated by the department for use in the title insurance business.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 12, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Robert R. Carter, Jr., Deputy Commissioner, Title Division, Mail Code 106-2T, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing should be submitted separately to the Chief Clerk's office. It should be noted that any comments received during the previous rulemaking hearing will be considered part of the record regarding these proposed amendments.

## **SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS**



## 28 TAC §9.1

The amendment is proposed pursuant to Insurance Code §§2502.051 - 2502.056, 2551.003, Chapter 2703, and 36.001 and HB 2565. Chapter 2703 authorizes and requires the commissioner to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Section 2551.003 authorizes the commissioner to promulgate and enforce rules prescribing underwriting standards and practices, and to promulgate and enforce all other rules necessary to accomplish the purposes of Chapter 9, concerning regulation of title insurance. Sections 2502.051 - 2502.056 prohibit the giving, allowance, acceptance or receipt of a rebate, discount, commission, or other thing of value directly or indirectly or for solicitation or referral of title insurance business. HB 2565, enacted by the 79th Legislature, Regular Session, amended §2502.055 to set forth specific promotional and educational activities that may be engaged in by a title insurance company or a title insurance agent. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code §§2502.051 - 2502.056, 2551.003, and Chapter 2703.

*§9.1. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

The Texas Department of Insurance adopts by reference the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas as amended effective November 1, 2005 [2004]. The document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, 333 Guadalupe Street, Austin, Texas 78701-1998.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503181

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 463-6327



## SUBCHAPTER C. TEXAS TITLE INSURANCE STATISTICAL PLAN

### 28 TAC §9.401

The amendment is proposed pursuant to Insurance Code §§2502.051 - 2502.056, 2551.003, Chapter 2703, and 36.001 and HB 2565. Chapter 2703 authorizes and requires the commissioner to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Section 2551.003 authorizes the commissioner to promulgate and enforce rules prescribing underwriting standards and practices, and to promulgate and enforce all other rules necessary to accomplish the purposes of Chapter 9, concerning regulation of title insurance. Sections 2502.051 - 2502.056 prohibit the giving, allowance, acceptance

or receipt of a rebate, discount, commission, or other thing of value directly or indirectly or for solicitation or referral of title insurance business. HB 2565, enacted by the 79th Legislature, Regular Session, amended §2502.055 to set forth specific promotional and educational activities that may be engaged in by a title insurance company or a title insurance agent. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code §§2502.051 - 2502.056, 2551.003, and Chapter 2703.

*§9.401. Texas Title Insurance Statistical Plan.*

The Texas Department of Insurance adopts by reference the rules contained in the Texas Title Insurance Statistical Plan as amended effective November 1, 2005 [2004]. This document is published by the Texas Department of Insurance and is available from the Property and Casualty Data Services Division, Mail Code 105-5D, Texas Department of Insurance, William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503182

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 463-6327



## TITLE 34. PUBLIC FINANCE

### PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

#### CHAPTER 25. MEMBERSHIP CREDIT SUBCHAPTER B. COMPENSATION

##### 34 TAC §25.30

The Teacher Retirement System of Texas (TRS) proposes new §25.30 concerning the conversion of amounts of noncreditable compensation to creditable compensation used as the basis for calculating a member's retirement benefits. The proposed new section implements the requirement that TRS adopt rules excluding compensation in the member's final years of employment that represents amounts converted from noncreditable compensation to creditable compensation. The proposal has been adopted on an emergency basis and is published in this issue of the *Texas Register*.

In accordance with Senate Bill 1691, 79th Legislature, Regular Session, the new section implements the requirement that the TRS Board of Trustees ("Board") adopt rules regarding the exclusion of amounts converted to creditable compensation during the last years of employment. The proposed section applies to the three years prior to retirement and establishes a base year of the fourth year or the fifth year if there is no compensation in the fourth year. The characterization of the compensation in the

base year is used to determine whether conversion occurred. The new section describes converted compensation. Payment for unused accrued leave or for accrued compensatory time for overtime worked is expressly excluded as creditable compensation. The new section relies on the certification of the reporting entity to notify TRS if conversion has occurred in the final years. It also clarifies that a member may provide supporting documentation if compensation is excluded but the member believes it should be creditable, but provides that TRS makes the final decision regarding whether compensation is creditable. This approach ensures a more consistent application of the rule and encourages members who experience an increase in compensation due to the conversion of noncreditable compensation to remain employed longer to receive any correlating compensation increase in their retirement benefit calculation.

The proposed new section will implement the requirement under Senate Bill 1691, 79th Legislature, Regular Session requiring the TRS Board to adopt rules excluding certain compensation amounts from the calculation of retirement benefits.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that, for each year of the first five years the proposed section will be in effect to implement Senate Bill 1691, enforcing or administering the rule will not have foreseeable implications relating to cost or revenues of state or local governments.

For each year of the first five years that the rule will be in effect, Mr. Galaviz has determined that the public benefit will be to provide notice, clarification, and guidance to employers and members of the requirements and procedures relating to the exclusion of converted compensation during the last years of employment from TRS-creditable compensation. Further, he states that the proposed rule will benefit the public by enhancing the long-term solvency of the retirement system. For each year of the first five years the section will be in effect, there may be an anticipated economic cost to members who are required to comply with the section as proposed because it affects the calculation of retirement benefits; however, such costs are difficult to project as they are largely dependent upon the amounts and types of compensation received. In any case, the benefits accruing from implementation of the proposed section are expected to outweigh these costs. Mr. Galaviz has also determined that, for each year of the first five years the proposed section is in effect, there will be no effect on a local economy, and therefore no local employment impact statement is required under §2001.022, Government Code. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than August 26, 2005.

The new section is proposed under and implements §22 of Senate Bill 1691, 79th Legislature, Regular Session, which amends §825.110, Government Code, and requires the Board to adopt rules to exclude from annual compensation all or part of salary and wages in the final years of a member's employment that reasonably can be presumed to have been derived from a conversion of fringe benefits, maintenance, or other payments not includable in annual compensation to salary and wages. The new section is also proposed under §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

No other codes are directly affected by the proposed new section.

§25.30. Conversion of Noncreditable Compensation to Salary.

(a) TRS excludes from creditable compensation any amount of otherwise eligible compensation that represents amounts converted into salary and wages from noncreditable compensation in the last three years prior to retirement.

(b) For purposes of this section, conversion occurs when an employer agrees to pay a member with creditable compensation for services performed in the future that in the past were paid with noncreditable compensation. Compensation in the form of accrued paid leave or accrued compensatory time for overtime worked cannot be converted to eligible compensation and are expressly excluded from creditable compensation at any time.

(c) The employer certifies whether compensation was converted in the last three years prior to retirement and the amount of the converted salary. In certifying whether conversion occurred in the last three years prior to retirement, the fourth year prior to retirement is the base year. If there is no credited amount of compensation in the fourth year, the fifth year prior to retirement is the base year. The characterization of the compensation in the base year as creditable or noncreditable is used in determining whether conversion occurred and the converted amounts are excluded as provided in subsection (a) of this section.

(d) If compensation is excluded under subsection (a) of this section, the member may provide additional information in the form of written documentation to demonstrate that the compensation should not be excluded. TRS makes the final determination regarding the characterization of compensation as creditable or noncreditable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503046

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 542-6438



**34 TAC §25.35**

The Teacher Retirement System of Texas (TRS) proposes new §25.35, concerning the administration of employer payments to the pension trust fund for new members. The proposed new section implements the requirement that employers shall pay the equivalent of the state contribution to the pension trust fund for new members in their first 90 days of employment. The proposal has been adopted on an emergency basis and is published in this issue of the *Texas Register*.

In accordance with Senate Bill 1691, 79th Legislature, Regular Session, the new section implements the new employer payment requirement. It provides guidance to employers regarding the start and end of the 90-day payment period as well as guidance on how to coordinate the end of a person's membership waiting period with the new payment requirement.

The proposed new section would administer the requirement under Senate Bill 1691, 79th Legislature, Regular Session that an

employer pay an amount equivalent to the state contribution for retirement for new employees who are also new TRS members for the first 90-days of employment.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that, for each year of the first five years the proposed rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the rule. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of the legislative enactment. The Legislative Budget Board (LBB) has determined that requiring local employers to make a contribution for the first 90 days of employment for new members does not result in direct savings to the state relating to the retirement contributions for these members because the state has not had to make the contribution for new employees pursuant to the provision under current law that delays eligibility for TRS membership for new employees for 90 days, with such provision expiring August 31, 2005. The LBB has estimated that, under Senate Bill 1691, the cost to public school employers will be about \$20 million annually statewide, and the cost to public higher-education employers will be about \$4 million annually statewide.

For each year of the first five years that the rule will be in effect, Mr. Galaviz has determined that the public benefit will be to provide notice, clarification, and guidance to employers of the requirements and procedures relating to payments for new members. Further, he states that the public will benefit by having new employees of public schools and public institutions of higher education become members of TRS three months earlier and contribute to the long-term solvency of the retirement system. Any probable economic costs to persons required to comply with the proposed section is the result of the legislative enactment. The LBB has estimated that the probable economic costs to persons required to comply with Senate Bill 1691 are about \$20 million annually statewide for public school employers and about \$4 million annually statewide for higher education employers. There will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022, Government Code. Any measurable impact on a local economy or local employment is the result of the legislative enactment. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than August 26, 2005.

The new section is proposed under §825.102, Government Code, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system. The new section is also proposed under §29 of Senate Bill 1691, 79th Legislature, Regular Session, which establishes new §825.4041, Government Code, and otherwise addresses implementation of the employer payment for new members.

Other code provisions affected by the proposed new section are §§821.001(7), 825.408, and 830.102, Government Code.

§25.35. Employer Payments for New Members.

(a) Effective September 1, 2005, the employer of a new member as defined by §825.4041, Government Code, shall pay the retirement system the required amount during the first 90 days of employment of the new member. When used in this section, "employer" has the meaning given it in §821.001(7), Government Code.

(b) A person hired before September 1, 2005, whose 90-day waiting period for membership in the retirement system did not end before September 1, 2005, is eligible to participate in the retirement system as a new member starting September 1, 2005.

(c) In determining the period of employment subject to employer payments, the following provisions apply:

(1) An employer shall count the date of employment of a new member as the first day of the 90-day payment period.

(2) An employer shall count calendar days of an employment period on or after September 1, 2005, towards the payment period, regardless of whether the days are in different school years.

(3) An employer shall count calendar days on or after September 1, 2005, during which an individual previously served as an employee with another TRS reporting entity towards the payment period.

(4) An employer shall not count any calendar days between periods of employment towards the payment period.

(5) Service provided by an employee on one calendar day to more than one employer that is a TRS reporting entity shall count as only one calendar day in the payment period. Each employer shall include such an employee's compensation in the aggregate compensation on which employer payment is required.

(6) A person who was hired before September 1, 2005, and who did not complete the 90-day waiting period before that date becomes eligible to participate in the retirement system starting September 1, 2005. The employer shall treat the member as a new member for the purpose of employer payments during the remainder of the 90-day period.

(d) For the purpose of administering this section, the date of employment means the date on which an employee begins to perform service for an employer that is a TRS reporting entity and the service is of a type that would otherwise qualify the employee for membership in the TRS pension plan, as provided under Subchapter A of this chapter (relating to Service Eligible for Membership). If the date of employment is a holiday or another type of day on which the employer does not normally require actual service to be performed by an employee, the employer may nevertheless count the day as the date of employment if the employer considers the individual to be an employee on that day.

(e) During September 2005, an employer shall submit employer payments to TRS on compensation paid to an employee for the first full pay period starting on or after September 1, 2005. In subsequent months, an employer shall submit employer payments and member and other required contributions to TRS on compensation paid to an employee for the entire pay period that contains the first date of the employee's eligibility for membership. An employer also shall submit such payments to TRS on compensation paid to an employee for the entire pay period that contains the 90th day of employment. For the purpose of this section, a pay period is the normal, established period of employment for which the employer regularly pays compensation to the employee, regardless of the date on which the employer actually pays the compensation.

(f) An employer required by law to pay the state contribution from certain funds for its employees who are TRS members is not required to make additional payment to TRS under this section during the

first 90 days of employment of a new member. A person employed by such an employer before September 1, 2005, shall be eligible for TRS membership in the manner described in subsection (b) of this section.

(g) An employer shall submit reports in a form required by TRS. Upon request by TRS, an employer or an employee shall provide copies of, or otherwise make available, any records that TRS determines are necessary to administer this section.

(h) An employer shall notify TRS immediately if it has failed to report an employee who was eligible for TRS membership and shall begin to report the employee as a member no later than the month immediately following the month in which the employer discovered the error. The employer shall correct any previous reports filed with TRS and make payments as required by this title.

(i) Because participation in the Optional Retirement Program ("ORP") under Chapter 830, Government Code, is in lieu of participation in TRS, a person employed on or after September 1, 2005, or whose 90-day waiting period expires on or after September 1, 2005, and who is otherwise eligible to elect to participate in ORP may elect to participate in ORP effective September 1, 2005. An election to participate in ORP must be made before the 91st day after becoming eligible to make the election, as required by §830.102, Government Code, but may not be made before the date on which an employee is eligible for TRS membership.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503048

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 542-6438



## CHAPTER 29. BENEFITS

### SUBCHAPTER A. RETIREMENT

#### 34 TAC §29.4, §29.12

The Teacher Retirement System of Texas (TRS) proposes amendments to §29.4, concerning changes to the computation of compensation for the purpose of calculating a standard annuity at retirement and new §29.12, concerning repeal of the subsidized early age retirement benefit. The proposed amendments and new section have also been adopted on an emergency basis and are published in this issue of the *Texas Register*.

The proposed amendments to §29.4 will allow TRS to implement Senate Bill 1691, 79th Legislature, Regular Session, which changes the basis for computing compensation from a three-year to a five-year salary average for the purpose of calculating a standard annuity at retirement. The statutory amendment is effective September 1, 2005. Senate Bill 1691, however, also contains a grandfathering provision to preserve the current computation of compensation based on a three-year salary average for members who meet one or more of the grandfathering requirements on or before August 31, 2005. Adopted on an emergency basis and proposed for permanent adoption elsewhere in

this issue of the *Texas Register*, new 34 TAC §51.12, concerning the applicability of certain laws in effect before September 1, 2005, sets out the details for applying the grandfathering requirements to proposed §29.4. As proposed, the amendments to §29.4 set out the new five-year salary average for those who are not grandfathered and, to administer the grandfathering provision, preserve the current three-year salary average as part of the rule for reference by TRS staff and the membership when the repealed statute no longer will appear in official statutory texts.

Proposed new §29.12 will allow TRS to implement the section of Senate Bill 1691 that affects what is commonly referred to as the "subsidized early age retirement benefit," which has been available to members who are at least age 55 and have at least 20 years of service credit but do not meet the requirements for normal age retirement, such as rule of 80. Under Senate Bill 1691, the subsidized early age retirement benefit is repealed effective September 1, 2005. Senate Bill 1691, however, also contains a grandfathering provision to preserve current law on the subsidized early age retirement benefit for members who meet one or more of the grandfathering requirements on or before August 31, 2005. New 34 TAC §51.12, concerning the applicability of certain laws in effect before September 1, 2005, which is adopted on an emergency basis and proposed for permanent adoption elsewhere in this issue, likewise sets out the details for applying the grandfathering requirements to proposed new §29.12. To administer the grandfathering provision, proposed new §29.12 preserves the subsidized early age retirement benefit requirements as part of the rule for reference by TRS staff and the membership when the repealed statute no longer will appear in official statutory texts.

The proposed amendments to §29.4 incorporate the change Senate Bill 1691 makes to the computation of compensation and proposed new §29.12 reflects the method of calculating the subsidized early age retirement benefits for grandfathered members under the legislative enactment. The proposed amendments and new section also preserve these benefit-related provisions as they exist under current law before September 1, 2005 for purposes of administering the grandfathering provision in Senate Bill 1691.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that, for each year of the first five years the proposed amendments and new section will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the rules. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of the legislative enactment.

For each year of the first five years that the proposed amendments and new section will be in effect, Mr. Galaviz has determined that the public benefit will be to provide notice, clarification, and guidance to TRS members regarding the statutory change affecting the computation of compensation, the statutory repeal of subsidized early age retirement benefit, and the preservation of current law for purposes of applying the statutory grandfathering requirements for these two benefit provisions. Any probable economic costs to persons required to comply with the proposed amendments and new section is the result of the legislative enactment. There will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022, Government Code. Any measurable impact on a local economy or local employment is the result of the legislative enactment.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than August 26, 2005.

Amended §29.4 is proposed for permanent adoption under §825.102, Government Code, which authorizes the Board of Trustees of TRS to adopt rules for the administration of the funds of the retirement system.

Other codes affected by the proposed amendments are §12 of Senate Bill 1691, 79th Legislature, Regular Session, which amends §824.203, Government Code, and §58 of Senate Bill 1691, which contains the grandfathering requirements related to the legislative amendment of §824.203, Government Code.

New §29.12 is proposed for permanent adoption under §825.102, Government Code, which authorizes the Board of Trustees of TRS to adopt rules for the administration of the funds of the retirement system.

Other codes affected by proposed new §29.12 include §11 of Senate Bill 1691, 79th Legislature, Regular Session, which amends §824.202, Government Code, and §58 of Senate Bill 1691, which contains the grandfathering requirements related to the legislative amendment of §824.202, Government Code.

#### *§29.4. Actual Compensation.*

(a) Actual compensation paid to a member is used in computing the highest five [~~best three~~]-years' average compensation. The computation of [~~Best three-years~~'] average compensation for members with credit transferred from the Employees Retirement System of Texas ("ERS") may not include compensation for any month which was credited or should have been credited by the ERS if the member received compensation for service [~~during~~] the same month covered by the Teacher Retirement System of Texas.

(b) A member eligible under §51.12 of this title (relating to Applicability of Certain Laws in Effect Before September 1, 2005) is eligible for computation of average compensation using a three-year salary average instead of a five-year salary average, as provided by §824.203(a), Government Code, prior to its amendment effective September 1, 2005, by Senate Bill 1691, 79th Legislature, Regular Session (2005).

#### *§29.12. Early Age Retirement Benefit Calculated on Law in Effect Before September 1, 2005.*

If a member eligible under §51.12 of this title (relating to Applicability of Certain Laws in Effect Before September 1, 2005) is at least 55 years old and has at least 20 years of service credit in the retirement system, the member is eligible to retire and receive a service retirement annuity reduced from the standard service retirement annuity available under §824.202(a)(2), Government Code, to a percentage derived from the following table, as provided by §824.202(c), Government Code, prior to its repeal effective September 1, 2005, by Senate Bill 1691, 79th Legislature, Regular Session (2005):  
Figure: 34 TAC §29.12

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503049

Ronnie Jung  
Executive Director  
Teacher Retirement System of Texas  
Earliest possible date of adoption: September 11, 2005  
For further information, please call: (512) 542-6438

## SUBCHAPTER F. PARTIAL LUMP-SUM PAYMENT

### 34 TAC §29.72

The Teacher Retirement System of Texas (TRS) proposes new §29.72, concerning eligibility to select a partial-lump sum option (PLSO). The new rule has also been adopted on an emergency basis and is published in this issue of the *Texas Register*.

New §29.72 will allow TRS to implement the section of Senate Bill 1691 that changes the eligibility requirement for a PLSO to require that the member meet the rule of 90 (age and service credit equal at least 90). Senate Bill 1691 also reduces the amount of a PLSO for early age retirement, as applicable. The statutory amendment is effective September 1, 2005. Senate Bill 1691, however, also contains a grandfathering provision to preserve the current PLSO eligibility requirements for members who meet one or more of the grandfathering requirements on or before August 31, 2005. New 34 TAC §51.12, concerning the applicability of certain laws in effect before September 1, 2005 and which is adopted on an emergency basis and proposed for permanent adoption elsewhere in this issue of the *Texas Register*, sets out the details for applying the grandfathering provision to new §29.72. To administer the grandfathering provision, new §29.72 preserves the current PLSO eligibility requirements as part of the rule for reference by TRS staff and the membership when the current text of the statute is replaced by the law as amended under Senate Bill 1691 in official statutory texts.

Proposed new §29.72 reflects the change Senate Bill 1691 makes in the eligibility requirements for a PLSO. The new rule also preserves the PLSO eligibility requirements as they exist under current law before September 1, 2005 for purposes of administering the grandfathering provision in Senate Bill 1691.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that, for each year of the first five years the proposed rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the rule. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of the legislative enactment.

For each year of the first five years that the rule will be in effect, Mr. Galaviz has determined that the public benefit will be to provide notice, clarification, and guidance to TRS members regarding the statutory change affecting the PLSO and the preservation of current law for purposes of applying the statutory grandfathering requirements for this benefit provision. Any probable economic costs to local employers required to comply with the rule is the result of the legislative enactment. There will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022, Government Code. Any measurable impact on a local economy or local employment is the result of the legislative enactment.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701. To be

considered, written comments must be received by TRS no later than August 26, 2005.

The new section is proposed for permanent adoption under §825.102, Government Code, which authorizes the Board of Trustees of TRS to adopt rules for the administration of the funds of the retirement system. The rule is also proposed under §824.2045, Government Code, which authorizes the Board to adopt rules for the implementation of §824.2045, relating to the partial lump-sum option. The new rule is also proposed under §2001.006 and §2001.034, Government Code.

Other codes affected by the proposed new section include §13 of Senate Bill 1691, 79th Legislature, Regular Session, which amends §824.2045, Government Code, and §58 of Senate Bill 1691, which contains the grandfathering requirements related to the legislative amendment of §824.2045, Government Code.

§29.72. Eligibility to Select PLSO.

(a) Except as provided in subsection (b) of this section, effective September 1, 2005, a member is eligible to select a partial lump-sum distribution only if the member's age and years of service credit total at least 90 at the time of retirement and the member meets the other requirements of §824.2045, Government Code, as amended by Senate Bill 1691, 79th Legislature, Regular Session (2005).

(b) A member eligible under §51.12 of this title (relating to Applicability of Certain Laws in Effect Before September 1, 2005) is eligible to select a partial lump-sum distribution as provided by §824.2045, Government Code, prior to its amendment effective September 1, 2005, by Senate Bill 1691, 79th Legislature, Regular Session (2005). Under §824.2045 prior to amendment, to be eligible to select a partial lump-sum distribution, a member must be eligible for an unreduced service retirement annuity under §824.202(a), Government Code, as it existed prior to amendment effective September 1, 2005, and must not be participating in the deferred retirement option plan under Subchapter E of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503051

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 542-6438



## CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

### SUBCHAPTER D. EMPLOYER PENSION SURCHARGE

#### 34 TAC §31.41

The Teacher Retirement System of Texas (TRS) proposes new §31.41, concerning the administration of an employer pension surcharge related to employment after retirement. The proposed new section implements the requirement that employers shall make monthly payments to the pension trust fund for each TRS-retired employee reported to TRS on the return to work report

of retirees, unless exempted by law. The proposal has been adopted on an emergency basis and is published in this issue of the *Texas Register*.

In accordance with Senate Bill 1691, 79th Legislature, Regular Session, the new section implements the new employer pension surcharge. It provides guidance to employers regarding the reported retirees for whom the surcharge is owed under Senate Bill 1691 and sets out procedures related to payments. In accordance with the legislative enactment, the TRS Board of Trustees separately adopted by resolution the pension surcharge amount, which is an amount equal to the sum of the combined member and state contributions (currently 12.4% of salary).

The proposed new rule would administer the requirement under Senate Bill 1691, 79th Legislature, Regular Session that a public-school employer pay 12.4% of the salary of a reported retiree for whom the surcharge is owed.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that for each year of the first five years the proposed rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the rule. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of the legislative enactment. The Legislative Budget Board (LBB) has determined that, under Senate Bill 1691, the cost to public school employers will be an average of about \$5,100 annually per reported retiree for whom the surcharge is owed, based on the rate of 12.4% and an average teacher salary of about \$41,000 per year. Under Senate Bill 1691, there would be no direct increase in general revenue to the state resulting from the employer pension surcharge. Any increased revenue to the TRS pension trust fund is difficult to project because it depends upon the number of retirees who will be reported for purposes of the surcharge and the amounts of salary that will be paid to them, as well as other factors.

Mr. Galaviz states that the public benefit will be to provide notice, clarification, and guidance to employers of the requirements and procedures relating to the pension surcharge. Further, he states that the public will benefit by having employers contribute to the long-term solvency of the retirement system when they hire retirees in lieu of new members. Any probable economic costs to local employers required to comply with the rule is the result of the enactment of Senate Bill 1691. The LBB has estimated that the probable economic costs to public school employers required to comply with Senate Bill 1691 and pay the pension surcharge will be an average of about \$5,100 annually per reported retiree for whom the surcharge is owed. There will be no measurable impact on a local economy or local employment because of the rule proposal, and therefore no local employment impact statement is required under §2001.022, Government Code. Any measurable impact on a local economy or local employment is the result of legislative enactment.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than August 26, 2005.

The new section is proposed under §825.102, Government Code, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system. The new section implements §30 of Senate Bill 1691, 79th Legislature, Regular Session, which establishes new §825.4092, Government Code.

Other code provisions affected by the proposed new rule are §§824.602, 824.6022, and 825.408, Government Code.

§31.41. Return to Work Employer Pension Surcharge.

(a) For each report month a retiree is reported on the Employment of Retired Member Report, the employer that reports the retiree shall pay to the Teacher Retirement System of Texas (TRS) a surcharge based on each retiree's salary. For purposes of this section the employer is the reporting entity that reports the employment of the retiree.

(b) The surcharge amount that must be paid by the employer for each retiree reported is an amount that is derived by applying a percentage to the retiree's salary. The percentage applied to the retiree's salary is an amount set by the Board of Trustees and is based on the member contribution rate and the state pension contribution rate.

(c) The surcharge is due from each employer that reports a retiree as working on or after September 1, 2005, beginning with the report month for September 2005.

(d) The surcharge is not owed by the employer for any retiree reported by that employer for the report month of January 2005.

(e) The surcharge is not owed by the employer for a retiree that is reported by a second employer for the report month of January 2005 if both employers are school districts that consolidate into a consolidated school district on or before September 1, 2005.

(f) The surcharge is not owed by the employer for a retiree that is reported as working under the exception for Substitute Service as provided in §31.13 of this title unless that retiree combines Substitute Service under §31.13 with One-half Time Employment under §31.14 of this title in the same calendar month. For each calendar month that the retiree combines employment under these two sections, the surcharge is owed by the employer that reports the retiree.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503056

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 542-6438



## CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

### SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

#### 34 TAC §41.4

The Teacher Retirement System of Texas (TRS) proposes new §41.4, concerning the administration of an employer health benefit surcharge related to employment after retirement. The new section implements the requirement that employers shall make monthly payments to the fund for the health benefits program ("TRS-Care") provided pursuant to the Texas Public School Retired Employees Group Benefits Act for each TRS-retired employee who is both (i) reported to TRS on the return to work report of retirees, taking into consideration any exceptions allowed by law, and (ii) enrolled in the TRS-Care health benefits program.

The proposal has been adopted on an emergency basis and is published in this issue of the *Texas Register*.

In accordance with Senate Bill 1691, 79th Legislature, Regular Session, the new section implements the new employer health benefit surcharge. It provides guidance to employers regarding the reported retirees for whom the surcharge is owed and procedures related to payments. In accordance with the legislative enactment, the TRS Board of Trustees separately adopted by resolution a table setting forth the monthly dollar amounts for the surcharge, as shown in the attached graphic titled "TRS-Care Employer Surcharge Amounts--Return to Work Effective September 1, 2005":

Figure: 34 TAC Chapter 41--Preamble

The proposed new rule would administer the requirement under Senate Bill 1691, 79th Legislature, Regular Session, that a public school employer pay an amount that is equal to the difference, if any, between (i) the amount that is required to be paid in premiums for the participation of the retiree and any other individuals enrolled in TRS-Care under the same account identification number and (ii) the full cost of the participation of the retiree and any other individuals enrolled in TRS-Care under the same account identification number.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that for each year of the first five years the proposed rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the rule. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of the legislative enactment. The table of costs shown in the attached graphic is based on the calculation required by Senate Bill 1691 and is derived using objective data. The cost to public school employers will vary according to the plan chosen by the reported retiree for whom the health benefit surcharge is owed, the number of individuals enrolled under the same account identification number, the years of service credit of the retiree, and the participants' Medicare eligibility, as set out in the attached graphic. Under Senate Bill 1691, there would be no direct increase in general revenue to the state resulting from the employer health benefit surcharge. Any increased revenue to the TRS-Care fund is difficult to project because it depends upon the number of retirees who will be reported for purposes of the surcharge and the amounts owed for them based on the calculation described above, as well as other factors.

Mr. Galaviz has also determined that the public benefit will be to provide notice, clarification, and guidance to employers of the requirements and procedures relating to the health benefit surcharge. Further, he states that the public will benefit by having employers contribute to the long-term solvency of the retirees' group health benefits plan. Any probable economic costs to local employers required to comply with the rule is the result of the enactment of Senate Bill 1691. The table of costs in the attached graphic sets out the range of costs to public school employers, from \$23 to \$688, depending on the plan chosen by the reported retiree for whom the health benefit surcharge is owed, the number of individuals enrolled under the same account identification number, the years of service credit of the retiree, and the participants' Medicare eligibility. There will be no measurable impact on a local economy or local employment because of the rule proposal, and therefore no local employment impact statement is required under §2001.022, Government Code. Any measurable impact on a local economy or local employment is the result of

legislative enactment. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than August 26, 2005.

The new section is proposed under §1575.052, Insurance Code, which authorizes the TRS Board of Trustees ("Board") to adopt rules it considers necessary to implement and administer the retirees' group health benefit plan and associated fund. The new section implements §30 and §42 of Senate Bill 1691, 79th Legislature, Regular Session, which respectively establish new §825.4092, Government Code, and amend §1575.204, Insurance Code.

Other code provisions affected by the proposed new rule are §§821.001(7), 824.602, 824.6022, and 825.408, Government Code, and Chapter 1575, Insurance Code.

§41.4. Employer Health Benefit Surcharge.

(a) When used in this section, the term "employer" has the meaning given in §821.001(7), Government Code.

(b) A retiree who is enrolled in the health benefits program ("TRS-Care") provided pursuant to the Texas Public School Retired Employees Group Benefits Act and is reported on the Employment of Retired Member Report to the Teacher Retirement System of Texas ("TRS") shall submit the Employer Health Benefit Surcharge form, promulgated by TRS, to the employer, providing details of the retiree's TRS-Care coverage, the cost of the coverage for the retiree and all other individuals enrolled under the same account identification number, the premium paid for such coverage, and other employment of a retiree or any other individual enrolled under the same account identification number, as required by the form. It is the employer's and the retiree's responsibilities to update the Employer Health Benefit Surcharge form, as necessary (e.g., when changes in coverage or the employment status of any retiree or other individual enrolled under the same account identification number occurs).

(c) For each report month a retiree is enrolled in TRS-Care and is reported on the Employment of Retired Member Report, the employer that reports the retiree shall, using the information provided by the retiree to the employer on the Employer Health Benefit Surcharge form, pay to the Retired School Employees Group Insurance Fund (the "Fund") a surcharge amount that is derived by taking the difference, if any, between:

(1) the monthly full cost, as set by the trustee, for all individuals (including a spouse and children, if any) enrolled under the same account identification number, and

(2) the monthly total premium, as set by the trustee, for all individuals (including a spouse and children, if any) enrolled under the same account identification number.

(d) The surcharge under subsection (c) of this section is due from each employer that reports a retiree as working on or after September 1, 2005, beginning with the report month for September 2005.

(e) The surcharge under subsection (c) of this section is not owed:

(1) by an employer for any retiree reported by that employer for the report month of January 2005;

(2) by an employer for any retiree reported by a second employer for the report month of January 2005, if both employers are

school districts that consolidate into a consolidated school district on or before September 1, 2005; or

(3) by an employer for a retiree reported as working under the exception for Substitute Service as provided in §31.13 of this title (relating to Substitute Service) unless that retiree combines Substitute Service under §31.13 of this title with One-half Time Employment under §31.14 of this title (relating to One-half Time Employment) in the same calendar month. For each calendar month that the retiree combines employment under these two sections of this title, the employer that reports the retiree owes the surcharge.

(f) An employer who reports to TRS the employment of a retiree who is enrolled in TRS-Care shall inform TRS as soon as possible in writing of the name, address, and telephone number of any other employer that employs the retiree or any other retiree who is also enrolled under the same account identification number.

(g) If more than one employer reports the employment of a retiree to TRS during any part of a month, the surcharge under subsection (c) of this section required to be paid into the Fund by each reporting employer for that month is the total amount of the surcharge due that month divided by the number of reporting employers. The pro rata share owed by each employer is not based on the number of hours respectively worked each week by the retiree for each employer, nor is it based on the number of days respectively worked during the month by the retiree for each employer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503043

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 542-6438



## CHAPTER 51. GENERAL ADMINISTRATION

### 34 TAC §51.12

The Teacher Retirement System of Texas (TRS) proposes new §51.12 concerning the applicability of certain benefits laws in effect before September 1, 2005. The proposed new section implements a grandfathering provision in Senate Bill 1691, 79th Legislature, Regular Session, to preserve current law on three benefit provisions for members who timely meet one or more of the grandfathering requirements. The rule has also been adopted on an emergency basis and is published in this issue of the *Texas Register*.

Senate Bill 1691, 79th Legislature, Regular Session, makes changes to the following benefit provisions: amends §824.202, Government Code, to eliminate what is commonly referred to as "subsidized early age retirement"; amends §824.203, Government Code, to change the three-year salary average to a five-year average for determining the standard annuity amount at retirement; and §824.2045, Government Code, to change eligibility requirements for the Partial Lump Sum Option (PLSO) to require a retiree to meet a rule of 90. These statutory changes are effective September 1, 2005. However, Senate Bill 1691 also contains a grandfathering provision to preserve



current law on these three benefit provisions for members who timely meet one or more of the grandfathering requirements. In accordance with the legislative enactment, the new rule implements and sets out the grandfathering provision, which requires that, on or before August 31, 2005, the member must attain the age of 50, meet the "rule of 70" (the sum of age plus years of service credit must equal 70 or greater), or have at least 25 years of service credit. The proposed new rule also provides guidance on the effect of termination of membership after meeting one or more grandfathering requirements and on using service credit in another Texas public retirement system for purposes of applying either the rule of 70 or the provision requiring 25 years of service credit.

The proposed new rule would administer the grandfathering provision under Senate Bill 1691, 79th Legislature, Regular Session that continues making available to grandfathered members the three affected benefit provisions under current law as it exists before September 1, 2005.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that, for each year of the first five years the proposed rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the rule. Rather, any measurable impact on the cost or revenues of the state or local governments is the result of the legislative enactment.

For each year of the first five years that the rule will be in effect, Mr. Galaviz has determined that the public benefit will be to provide notice, clarification, and guidance to TRS members regarding the grandfathering requirements for the three benefit provisions described above. Any probable economic costs to local employers required to comply with the rule is the result of the legislative enactment. There will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022, Government Code. Any measurable impact on a local economy or local employment is the result of the legislative enactment.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than August 26, 2005.

The new section is proposed for permanent adoption under §825.102, Government Code, which authorizes the Board of Trustees of TRS to adopt rules for the administration of the funds of the retirement system. The new rule is also proposed under §824.2045, Government Code, which authorizes the Board to adopt rules for the implementation of §824.2045, relating to the partial lump-sum option. The new section is also proposed under §§2001.006 and 2001.034, Government Code.

Other codes affected by the proposed new section include §§11, 12, 13, and 58 of Senate Bill 1691, 79th Legislature, Regular Session, which, respectively, amend §§824.202, 824.203, and 824.2045, Government Code.

§51.12. Applicability of Certain Laws in Effect Before September 1, 2005.

(a) A person who retires under the Teacher Retirement System of Texas on or after September 1, 2005, and who meets one or more of the following requirements on or before August 31, 2005, is governed by provisions of state law relating to early retirement with at least twenty years of service credit under §824.202(c), Government Code, three year salary average under §824.203, Government Code,

and the partial lump sum option (PLSO) under §824.2045, Government Code, as those provisions existed prior to September 1, 2005:

- (1) the person has attained age 50;
- (2) the sum of the person's age and amount of service credit in the retirement system equals 70 or greater; or
- (3) the person has at least 25 years of service credit in the retirement system.

(b) A member who meets at least one of the requirements of subsection (a) of this section by August 31, 2005, before termination of membership through withdrawal of member contributions or absence from service shall be considered as continuing to be eligible under subsection (a) of this section upon resumption of membership.

(c) Service that is credited with another Texas public retirement system and that meets all requirements to be used for retirement eligibility under the proportionate retirement program or the ERS/TRS transfer program may be considered to determine eligibility of a TRS member under paragraphs (2) and (3) of subsection (a) of this section.

(d) Purchased or reinstated service credit in the retirement system may be considered to determine eligibility of a TRS member under paragraphs (2) and (3) of subsection (a) of this section if credited in accordance with uniform administrative requirements, including payment deadlines, established by the retirement system in order to complete processing for members who request purchase of service credit before August 31, 2005.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503053

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 542-6438



## PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

### CHAPTER 101. PRACTICE AND PROCEDURE REGARDING CLAIMS

#### 34 TAC §101.16

The Texas County and District Retirement System proposes an amendment to §101.16, concerning the venue of hearings before the State Office of Administrative Hearings (SOAH). The proposed amendment causes the rule to conform to the statutory change made by §3, House Bill 633, 79th Legislature (2005), which set Travis County as the venue for a hearing before the SOAH involving the retirement system.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be the savings to the system in administrative costs and resources by holding all hearings in Travis County, the location of all system records and personnel. There will be no costs to small businesses. Other than costs directly resulting from the statutory change, there are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The rule is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

The Government Code, §841.0051 is the basis for the proposed rule.

*§101.16. Conduct of Contested Case Hearings.*

(a) After the filing of a request for a contested case hearing pursuant to these rules, or after the filing of a third-party answer under §101.12 of this title (relating to Contest of Application: Form and Content), the director shall cause the contested case to be docketed in the State Office of Administrative Hearings (SOAH), by filing with the SOAH a "Request for Setting of Hearing" or a "Request for Assignment of Administrative Law Judge" as the director deems appropriate, along with a certified copy of the pleadings, orders, and other relevant documents in the System's files at that time concerning the issues in dispute.

(b) After the case has been docketed with [a] the SOAH and an administrative law judge has been assigned, the director shall notify all parties to the proceeding of the actions taken. Thereafter, any amended pleading or any motion filed in connection with the case, including, but not limited to, motions for continuance, discovery, settings and other relief, shall be filed with the SOAH at its office in Austin, Texas, until such time as the proposal for a decision has been presented to the board of trustees as hereinafter provided.

(c) At least 10 days prior to the hearing, the director shall give notice to all parties as required by §2001.051 of the Administrative Procedure Act (Chapter 2001, Government Code).

(d) The hearing will be conducted by an administrative law judge assigned by the SOAH, and shall be conducted in accordance with the Administrative Procedure Act (Chapter 2001, Government Code), these rules, and the rules adopted by the SOAH. Hearings will [ordinarily] be conducted in Travis County [Austin, unless on motion of a party for good cause shown, the hearing, or a portion thereof, is conducted elsewhere in the State of Texas; hearings will be conducted at the site designated by the SOAH].

(e) Parties to the hearing, including the system, may be represented by counsel. All parties, including the system, may introduce testimony of witnesses, records, documents, and other evidence relevant to the claim or matter which is the subject of the hearing. The administrative law judge shall have authority to administer oaths, examine witnesses, rule on the admissibility of evidence, recess the hearing from day to day, or to a specified date, and otherwise to regulate and conduct the hearing to the end that the issues may be presented fairly and with order and decorum.

(f) The provisions of the Administrative Procedure Act (Chapter 2001, Government Code) shall govern the admissibility of evidence,

but the system will take notice of any facts established by its records unless a party to the proceedings files a written protest of its validity.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503162

Tom Harrison

General Counsel and Deputy Director

Texas County and District Retirement System

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 328-8889



## CHAPTER 105. CREDITABLE SERVICE

### 34 TAC §105.2

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas County and District Retirement System or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas County and District Retirement System proposes the repeal of §105.2, concerning the exclusion of probationary employees. The proposed repeal is in conformity with the statutory change made by §9, House Bill 633, 79th Legislature (2005), which, by amendment, repealed the statutory exclusion from membership of the probationary employees of certain subdivisions.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that there will be no fiscal implications for state or local government as a result of the repeal of the rule.

Mr. Harrison has also determined that there will be no costs to small businesses. Other than costs directly resulting from the statutory change, there are no anticipated economic costs to persons who are affected by the repeal.

Comments on the proposed repeal may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The repeal is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

The Government Code, §842.107 is the basis for the proposed repeal.

*§105.2. Probationary Employment.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503163

Tom Harrison  
Deputy Director and General Counsel  
Texas County and District Retirement System  
Earliest possible date of adoption: September 11, 2005  
For further information, please call: (512) 328-8889



### 34 TAC §105.3

The Texas County and District Retirement System proposes an amendment to §105.3, concerning the crediting in the retirement system of qualified military service of eligible members. The proposed amendment causes the rule to conform to the statutory changes made by §15, House Bill 633, 79th Legislature (2005), which limited the crediting of qualified military service not subject to the Uniform Services Employment and Reemployment Rights Act (USERRA) to active-duty service; and which eliminated the exclusion of 20-year military retirees from eligibility for qualified military service not subject to USERRA. The proposed rule also implements the statutory change made by §18, House Bill 1984, 78th Legislature (2003) which tied the eligibility for qualified military service to the accumulation of sufficient years of credited service to allow retirement from the authorizing subdivision at age 60.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be the consistent treatment of the military service time of all veterans of an authorizing subdivision, and the administrative convenience of using vested status in the subdivision as the basis for eligibility for credited service for qualified military service. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The rule is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

The Government Code, §843.601 is the basis for the proposed rule.

#### *§105.3. Credited Service for Qualified Military Service.*

##### (a) In this section:

(1) The term "Act" means the Texas Government Code, Title 8, Subtitle F as amended. Unless otherwise indicated, all section numbers refer to sections of the Act.

(2) The term "credited service" means months of membership service for determining retirement eligibility only. Member contributions and monetary credits are not required or permitted with respect to credited service for qualified military service established after December 31, 1999.

(3) The term "eligible member" means a member of an eligible subdivision who has [performed as an employee, at least 10 years

of service credited in the retirement system; who does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active federal military duty or its equivalent;] credited service in the retirement system for at least the minimum period required to receive a service retirement annuity from the subdivision at age 60, who has performed qualified military service; and who has been released from military duty under honorable conditions.

(4) The term "eligible subdivision" means a subdivision whose governing board has adopted the optional authorization for the establishment of credited service in the retirement system for qualified military service under §843.601(c).

(5) The term "qualified military service" means service in the uniformed services as defined in 38 U.S.C. §4303(13). It excludes that service which was performed in a month for which the member has received credited service in this retirement system under any other provision of the Act, and that service which is credited by another retirement system or program established or governed by state law. A member may not receive more than one month of credited service for any calendar month.

(b) An eligible member may receive one month of credited service in the retirement system for each month of qualified military service performed while on active duty. [~~A member may receive one month of credited service in the retirement system for each 12 months or fraction of months of qualified military service performed while on inactive duty.~~] An eligible member may not accumulate more than a combined total of 60 months of credited service in the retirement system for qualified military service under §843.601 and for membership credited service under § [Section] 842.109[(b)](c).

~~[(c) The governing body of an eligible subdivision that has adopted the Optional Benefit Eligibility Plan Two described by §844.210 may authorize a reduction in the minimum credited service requirement for eligibility to establish credit under §843.601(c) from 10 to 8 years. The reduction may not take effect until January 1 of the year following the year in which the authorization was adopted except that a reduction authorized by an eligible subdivision that begins participation after December 31, 1999 may take effect on the date the subdivision begins participation.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503164

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 328-8889



### 34 TAC §105.5

The Texas County and District Retirement System proposes an amendment to §105.5, concerning the responsibility and method to be used by sponsoring employers for the correction of errors. The proposed amendment causes the rule to conform to the statutory change made by §13, House Bill 633, 79th Legislature (2005), which clarified that the employer is responsible for the correction of an error caused by the act or omission of the employer.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be the savings associated with the establishment of a clear procedure for use by sponsoring employers to correct an error outside of a formal judicial proceeding. There will be no costs to small businesses. Other than costs directly resulting from the statutory change, there are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The rule is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

The Government Code, §842.112 is the basis for the proposed rule.

*§105.5. Correction of Errors by Employers: Record Adjustments.*

(a) The sponsoring employer is responsible for the correction of an error arising from an act or omission of the employer that results in a person contributing more or less than the correct amount to the system or receiving more or less credited service, service credit or benefits than the person is rightfully entitled to receive under the system.

(b) The employer may initiate the correction process by filing an application with the system for an adjustment to the person's record. The application must adequately describe the error and set forth the terms of the adjustment to be made to the person's record.

(c) A person seeking an adjustment to a record based on an act or omission of the subdivision must apply to the sponsoring employer for a correction of the error. The system will not receive applications for record adjustments from any person other than an employer. If the system receives information relating to a possible error from a person other than an employer, the system shall forward the information to the appropriate employer.

(d) If the director is provided with satisfactory evidence of the error, the director may at his discretion accept the application and order an adjustment to the person's record in accordance with the terms set forth in the application provided:

(1) The terms of the adjustment on the face of the application would not grant the person a right, status or benefit not otherwise available under this subtitle;

(2) The terms of the adjustment are reasonable and can be feasibly implemented and administered by the system; and

(3) The terms of the adjustment can be implemented without causing financial instability with respect to the employer's participation in the system or causing a reduction in the accrued benefit of any other member or annuitant of the employer.

(e) In this section the term "record" means all information and amounts relating to the person and the person's beneficiary and includes information and amounts relating to the person's individual account, contributions, deposits, credited service, service credit and benefits.

(f) In this section the term "individual account" means the separate account maintained for a member consisting of the member's contributions, deposits and accumulated interest credited to the account for the benefit of the member.

(g) In this section the term "credited service" means months of service recognized for purposes of retirement eligibility.

(h) In this section the term "service credit" means the monetary credits granted to a member who performs service for a participating employer.

(i) In this section the term "filed" means received by the system.

(j) In this section the term "accepted" means approved by the system for making adjustments to a person's record in accordance with the terms of the application.

(k) The application of a sponsoring employer under this section may be filed at any time.

(l) All applications filed under this section with the system must be certified by the sponsoring employer before the application may be accepted.

(m) If an adjustment pursuant to this section relates to a period of service that is greater than 12 months or ended more than 12 months prior to the application filing date, the application must be approved by the governing board of the employer before it may be accepted by the system.

(n) If the terms of the adjustment as set forth on the application specify a change to the person's months of credited service, that adjustment will be made upon acceptance of the application and receipt by the system of the amount that would have been contributed by the member for those specified months. The system will not accept any payments due under this section from any person other than an employer.

(o) If the terms of the adjustment as set forth on the application specify a change to the person's individual account balance, service credit or benefit, that adjustment may not be made until the system receives any payment necessary to implement the terms of the adjustment. The system will not accept any payments due under this section from any person other than an employer.

(p) With respect to certain errors that are the subject of an adjustment under this section, the sponsoring employer may request the system to provide a description of what the person's record would show if no error had occurred. This description may include changes to amounts of employee contributions, accumulated interest, prior service credit, current service credit, multiple matching credit, retirement benefits, or retirement eligibility dates. Evidence showing dates of service and the compensation that was paid to the member by the employer for such service should be submitted to the system in order that the system may accurately determine any changes.

(q) The application may specify adjustments in any amounts that do not exceed the changes to the person's record determined as if there had been no error.

(r) An application for an adjustment is not an application for retirement; however, a retirement application may be filed simultaneously with an application for adjustment. An adjustment to a person's prior service credit may not be made if the application is filed more

than five years after the date the person became a member of the sponsoring employer.

(s) Adjustments to service credits or benefits shall be considered as part of, and funded in the same manner as, any other pension liabilities of the employer.

(t) The director may implement the terms of the proposed adjustment to the extent that the funding of the pension liabilities attributable to the adjustments proposed by the employer do not cause financial instability with respect to the employer's participation in the system or cause a reduction in accrued benefits of any other members or annuitants. This may include partial implementation or implementation of the adjustments in stages.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503165

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 328-8889



## CHAPTER 107. MISCELLANEOUS RULES

### 34 TAC §107.10

The Texas County and District Retirement System proposes an amendment to §107.10, concerning the adjustment to the employer's account in the event an ineligible benefit payment caused by the error or omission of the employer is not recoverable by the system. The proposed amendment causes the rule to conform to the statutory change made by §13, House Bill 633, 79th Legislature (2005), which clarified that the employer is responsible for an overpayment of benefits caused by the act or omission of the employer; and implements the authority granted to the system by §35, House Bill 1984, 78th Legislature (2003), to adjust amounts in a subdivision's account to correct an error related to the account.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be the proper allocation and adjustment to the account of the relevant employer of the costs of ineligible benefit payments made as a result of the employer's error or omission. There will be no costs to small businesses. Other than costs directly resulting from the statutory change, there are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The rule is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

The Government Code, §842.112 and §845.503 are the basis for the proposed rule.

#### §107.10. Treatment of Ineligible Benefit Payments.

(a) In this section the term "ineligible benefit payment" means that portion of a payment or distribution, other than a supplemental death benefit payment, made by the retirement system to, or on behalf of, a living or deceased person who was not legally entitled to the payment at the time it was made. An ineligible benefit payment is a receivable of the system.

(b) In this section the term "recipient" means the person or persons who, directly or indirectly, received an ineligible benefit payment.

(c) If a repayment of an ineligible benefit payment is not received by the retirement system, the system may offset the amount of the ineligible benefit payment against future benefit payments otherwise due the recipient.

(d) If the board determines that an ineligible benefit payment is not recoverable, the receivable shall be charged against the general reserves account of the endowment fund provided the ineligible benefit payment was not the result of an error or omission of a participating subdivision.

(e) If the board determines that the ineligible benefit payment was the result of an error or omission of a participating subdivision and determines that the payment is not recoverable, the receivable shall be charged against the subdivision's account in the subdivision accumulation fund.

(f) [(e)] In making its determination, the board may consider the amount of the ineligible benefit payment, the likelihood of repayment, the costs of recovery, and any other fact or circumstance which the board considers to be relevant in finding that further efforts for the recovery of the payment are not in the best interests of the retirement system, its members and annuitants.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503166

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 328-8889



### 34 TAC §107.11

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas County and District Retirement System or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas County and District Retirement System proposes the repeal of §107.11, concerning the authority and powers that a subdivision may exercise over a plan for which it has assumed financial responsibility. §5, House Bill 633, 79th Legislature

(2005), expanded and codified the authority and powers granted to successor subdivisions. The proposed repeal eliminates this now unnecessary rule.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that there will be no fiscal implications for state or local government as a result of the repeal of the rule.

Mr. Harrison has also determined that there will be no costs to small businesses. Other than costs directly resulting from the statutory change, there are no anticipated economic costs to persons who are affected by the repeal.

Comments on the proposed repeal may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The repeal is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

The Government Code, §842.0075 is the basis for the proposed repeal.

*§107.11. Plan Changes by Successor Subdivision.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503167

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 328-8889



**34 TAC §107.12**

The Texas County and District Retirement System proposes an amendment to §107.12, concerning the distribution of benefit payments that are due or suspended at the time of the annuitant's death. The proposed amendment causes the rule to conform to the statutory change made by §12, House Bill 633, 79th Legislature (2005), which permits an employer to reemploy a retiree of that employer without causing a suspension of the retiree's annuity.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be the designation of a specific and certain recipient for the distribution of any annuities suspended under prior law because of the reemployment of the retiree. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The rule is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

The Government Code, §842.110 is the basis for the proposed rule.

*§107.12. Payments Due or Suspended on Death of Annuitant.*

(a) ~~[Payments under an annuity that is suspended because a retiree is reemployed under §842.110, Government Code] Payments under an annuity that have been suspended as a result of a retiree's reemployment prior to January 1, 2006, under §842.110, Government Code, are payable, if the retiree dies before making an application for [resumption of the annuity] distribution of the accumulated payments, to the surviving beneficiary that had been selected at the time of the retirement for which the annuity originally was being paid.~~

(b) Payments of an annuity that are due and have not been made or have been made but not negotiated on the date of death of an annuitant are payable to the beneficiary of the annuitant on file with the retirement system for the annuity on the date of the annuitant's death.

~~[(c) The retirement system shall make payments of an annuity described by Subsection (a) or (b) of this section and for which more than one beneficiary is on file with the system to a single beneficiary designated on one or more forms signed by all beneficiaries and filed with the system.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503168

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 328-8889



**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

**CHAPTER 9. MENTAL RETARDATION SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES**

**SUBCHAPTER E. ICF/MR PROGRAMS--CONTRACTING**

**DIVISION 6. PERSONAL FUNDS**

**40 TAC §9.254**

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability

Services (DADS), an amendment to §9.254, concerning items and services provided by the program provider, in Chapter 9, Mental Retardation Services--Medicaid State Operating Agency Responsibilities.

#### Background and Purpose

The purpose of the amendment is to revise the list of items and services that are in the reimbursement rate for intermediate care facilities for persons with mental retardation and related conditions (ICFs/MR) to exclude prescribed medication that is in a category covered by Medicare Part D for an individual who is eligible for Medicare Part D.

DADS is proposing the amendment in conjunction with HHSC's proposed amendment to 1 TAC §355.103, published elsewhere in this issue of the *Texas Register*. HHSC is proposing its amendment in response to new federal requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Beginning January 1, 2006, individuals, including persons enrolled in the ICF/MR Program, who are eligible for both Medicare and Medicaid (dually eligible individuals) must obtain prescription drugs through a Medicare Part D prescription drug plan, rather than through Medicaid.

Under the MMA, Medicaid funds must not be used to pay for a prescription drug for a person who is eligible for Medicare Part D benefits if that drug is in a category of drugs that is covered by Medicare Part D. Therefore, in its proposed amendment to 1 TAC §355.103, HHSC will disallow an ICF/MR Program provider from including such a drug on its cost report.

#### Section-by-Section Summary

To be consistent with the proposed amendment to 1 TAC §355.103, DADS is amending the list of items and services in §9.254 that are in the ICF/MR Program reimbursement rate to exclude prescribed medication in a category covered by Medicare Part D for an individual who is eligible for Medicare Part D.

The amendment also corrects rule cross-references that were rendered incorrect upon the transfer of Texas Department of Mental Health and Mental Retardation rules from Title 25 to Title 40 of the Texas Administrative Code.

#### Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

#### Small Business and Micro-business Impact Analysis

DADS has determined that there is no adverse economic effect on small businesses or micro-businesses, or on businesses of any size, as a result of enforcing or administering the amendment, because the amendment changes the list of items and services in the ICF/MR reimbursement rate but does not change the reimbursement rate.

#### Cost to Persons and Effect on Local Economies

DADS does not anticipate that there will be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

#### Public Benefit

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that DADS will be in compliance with the MMA and that DADS' rule concerning the items and services that are in the ICF/MR reimbursement rate will be consistent with HHSC's cost reporting rule for ICF/MR Program providers.

#### Takings Impact Assessment

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### Public Comment

Questions about the content of this proposal may be directed to Owen Wheeler at (512) 438-4385 in DADS' Provider Services Division, Institutional Services Section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-028, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

#### Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

#### §9.254. *Items and Services Provided by the Program Provider.*

A program provider must not charge an individual or require an individual to expend personal funds for items and services that are the program provider's responsibility to provide, except as authorized by §9.255(a)(1) [~~§419.255(a)(1)~~] of this title (relating to Items and Services Purchased with Personal Funds), because they are included in the ICF/MR Program reimbursement rate or are covered by other Medicaid programs. These items and services include:

- (1) (No change.)
- (2) prescribed and over-the-counter medication;[;]

(A) for an individual who is not eligible for Medicare Part D benefits; or

(B) for an individual who is eligible for Medicare Part D benefits if the medication is prescribed and is in a category that is not covered by Medicare Part D;

- (3) - (4) (No change.)
- (5) eye exams and eyeglasses, except:

(A) the difference between the Medicaid payment and the actual cost of the eyeglasses as authorized by §9.255(a)(2)

[§419.255(a)(2)] of this title [(relating to Items and Services Purchased with Personal Funds)]; or

(B) as authorized by §9.255(a)(6) [§419.255(a)(6)] of this title; [(relating to Items and Services Purchased with Personal Funds).]

(6) - (16) (No change.)

(17) transportation costs to and from:

(A) (No change.)

(B) an activity that is part of the program provider's recreational program;[-]

(18) - (20) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 29, 2005.

TRD-200503104

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 438-3734



## CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

### SUBCHAPTER AA. VENDOR PAYMENT

#### 40 TAC §19.2601

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §19.2601, concerning vendor payments (items and services included), in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

#### Background and Purpose

The purpose of the amendment is to revise the list of items and services that are in the daily payment rate for nursing facilities to exclude prescription drugs covered by Medicare Part D for an individual who is eligible for Medicare Part D.

DADS is proposing the amendment in conjunction with HHSC's proposed amendment to 1 TAC §355.103, published elsewhere in this issue of the *Texas Register*. HHSC is proposing its amendment in response to new federal requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Beginning January 1, 2006, individuals, including residents of nursing facilities, who are eligible for both Medicare and Medicaid (dually eligible individuals) must obtain prescription drugs through a Medicare Part D prescription drug plan, rather than through Medicaid.

Under the MMA, Medicaid funds must not be used to pay for a prescription drug for a person who is eligible for Medicare Part D benefits if that drug is in a category of drugs that is covered by Medicare Part D. Therefore, in its proposed amendment to 1 TAC

§355.103, HHSC will disallow a nursing facility from including such a drug on its cost report.

#### Section-by-Section Summary

To be consistent with the proposed amendment to 1 TAC §355.103, DADS is amending the list of items and services in §19.2601(b) that are in the nursing facility daily payment rate to exclude legend (i.e., prescription) drugs in a category covered by Medicare Part D for an individual who is eligible for Medicare Part D.

The amendment also corrects an obsolete cross-reference and updates references from the Texas Department of Human Services (DHS) to DADS, which is the new name of the agency responsible for rules governing licensure and certification requirements for nursing facilities.

#### Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

#### Small Business and Micro-business Impact Analysis

DADS has determined that there is no adverse economic effect on small businesses or micro-businesses, or on businesses of any size, as a result of enforcing or administering the amendment, because the amendment changes the list of items and services in the nursing facility daily payment rate but does not change the payment rate.

#### Cost to Persons and Effect on Local Economies

DADS does not anticipate that there will be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

#### Public Benefit

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that DADS will be in compliance with the MMA and that DADS' rule concerning the items and services that are in the nursing facility daily payment rate will be consistent with HHSC's cost reporting rule for nursing facilities.

#### Takings Impact Assessment

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### Public Comment

Questions about the content of this proposal may be directed to Hannah Ndika at (512) 438-2133 in DADS' Regulatory Services Policy Development and Support Unit. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-028, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

#### Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of



services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate convalescent and nursing homes and related institutions.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§242.001-242.852.

§19.2601. *Vendor Payment (Items and Services Included).*

(a) (No change.)

(b) The daily rate is compatible with reasonable charges consistent with efficiency, economy, and quality of total care. The facility must ensure that care meets the health needs and promotes the maximum well-being of recipients. The following items and services are included in the payment rate made to the facility by the Department of Aging and Disability Services (DADS) and, therefore, the facility must provide [It includes]:

(1) - (4) (No change.)

(5) for a recipient who is not eligible for Medicare Part D benefits, legend drugs that are not covered by the Medicaid Vendor Drug Program [program];

(6) for a recipient who is eligible for Medicare Part D benefits, legend drugs in a category that is not covered by Medicare Part D and that are not covered by the Medicaid Vendor Drug Program;

(7) [(6)] regular laundry services, except dry cleaning;

(8) [(7)] medical accessories, such as canulas, tubes, masks, catheters, ostomy bags and supplies, IV fluids, IV equipment, and equipment that can be used by more than one person, such as wheelchairs, adjustable chairs, crutches, canes, mattresses, hospital-type beds, enteral pumps, trapeze bars, walkers, and oxygen equipment, such as tanks, concentrators, tubing, masks, valves, and regulators.

(A) Facilities are required to maintain, in good repair, equipment necessary to meet the needs of the recipient.

(B) If a recipient desires equipment for exclusive use, its purchase is the responsibility of the recipient:

(i) Only the recipient can use the equipment, and it must be identified as the personal property of the recipient.

(ii) Upon discharge from the facility, the recipient retains the equipment he purchased. If the recipient dies, the purchased equipment must be transferred to the estate. If it is donated or sold to the facility by the recipient or the estate, the transaction must be documented. (See §19.416 of this title (relating to Personal Property)).

(C) If a recipient owns a piece of equipment that is medically necessary, the facility must maintain and repair the equipment.

(D) When Part B Medicare benefits are accessed to pay for equipment and accessories, the recipient or family may not be charged by the facility or supply company for any portion of these items;

(9) [(8)] medical supplies, including, but not limited to tongue depressors, swabs, bandaids, cotton balls, and alcohol; and

(10) [(9)] basic personal hygiene items and services to meet the needs of the residents (See §19.405(h) of this title (relating to Additional Requirements for Trust Funds in Medicaid-Certified Facilities) for a list of such items and services). The specific type or brand of personal hygiene items used by the facility must be disclosed to the recipient; then, if a recipient prefers to use a specific type or brand of a personal hygiene item(s) rather than the item(s) furnished by the facility, he may use his personal funds to purchase the item(s).

(A) Before purchasing or charging for the preferred item(s), the facility must secure written authorization from the recipient or family indicating his desired preference, the date, and signature of the person requesting the preferred item(s). The signature may not be that of an employee of the facility.

(B) If the recipient's personal funds are used to purchase an item(s), the item(s) is for his sole use.

(C) When the facility purchases personal hygiene item(s) with the recipient's personal funds, the facility must ensure that the item(s) is in an individual container or package that is labeled with the recipient's name. The facility is not held responsible for labeling personal hygiene items brought into the facility and not reported to the management.

(c) (No change.)

(d) If a resident has requested and freely chosen to participate in an activity, or to have an item or service provided that is not included, or is different than that provided, in the daily vendor rate, then the resident may be charged for the activity, item, or service.

(1) When documentation is present that supports the above criteria, and that is required by §19.405(d)(5) [§19.404(e)(5)] of this title [(relating to Protection of Resident Funds)], the amount may be paid from the resident's trust fund.

(2) (No change.)

(e) Except as described in paragraphs (1) and (2) of this subsection, DADS [the Texas Department of Human Services (DHS)] makes vendor payments to Nursing Facilities for the day a recipient enters a nursing facility, but not for the day a recipient leaves a facility. The two exceptions are as follows.

(1) If entrance and departure are on the same day, and the recipient does not enter another Title XIX facility on that day, DADS [DHS] pays for the entire day.

(2) If departure is because of the recipient's death and the deceased recipient is not sent to another Title XIX facility for legal procedures necessary upon the death of the recipient, DADS [DHS] pays for the entire day.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 29, 2005.

TRD-200503105

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 438-3734

◆   ◆   ◆

## PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

### CHAPTER 702. GENERAL ADMINISTRATION

#### SUBCHAPTER E. MEMORANDUM OF UNDERSTANDING WITH OTHER STATE AGENCIES

##### 40 TAC §702.413

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §702.413, concerning memorandum of understanding (MOU) concerning the Communities In Schools program, in its General Administration chapter. The Communities In Schools (CIS) program was transferred from DFPS to the Texas Education Agency (TEA) by the 78th Legislature. TEA is in the process of adopting new Communities In Schools rules. The purpose of the repeal is to delete the MOU, which was between DFPS and TEA and is now obsolete.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be that the obsolete rule will be deleted. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to David Whiteside at (512) 438-3755 in DFPS's Purchased Client Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-324, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed repeal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

The repeal is proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human

Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes FPS to propose and adopt rules to facilitate implementation of Department programs.

The repeal implements the Education Code, Subchapter E, Chapter 33.

*§702.413. Memorandum of Understanding (MOU) Concerning the Communities In Schools Program.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503062

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 438-3437

◆   ◆   ◆

## CHAPTER 704. PREVENTION AND EARLY INTERVENTION SERVICES

### SUBCHAPTER E. COMMUNITIES IN SCHOOLS

##### 40 TAC §§704.401, 704.403, 704.405, 704.407, 704.409, 704.411

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§704.401, 704.403, 704.405, 704.407, 704.409, and 704.411, in its Prevention and Early Intervention Services chapter. The Communities In Schools (CIS) program was transferred from DFPS to the Texas Education Agency (TEA) by the 78th Legislature. TEA is in the process of adopting new Communities In Schools rules. The purpose of the repeal is to delete the CIS rules from the DFPS agency rules.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that CIS rules will be found at the agency where the program resides, TEA. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to David Whiteside at (512) 438-3755 in DFPS's Purchased Client Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-324, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed repeals do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

The repeals are proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes FPS to propose and adopt rules to facilitate implementation of Department programs.

The repeals implement the Education Code, Subchapter E, Chapter 33.

*§704.401. How are the key terms in this subchapter defined?*

*§704.403. What are the roles and responsibilities of PRS and Texas Education Agency (TEA) with respect to the CIS program?*

*§704.405. Can more than one local CIS program serve the same independent school district?*

*§704.407. What guidelines must CIS providers adhere to in order to contract with PRS for CIS services?*

*§704.409. How are appropriated state and federal funds allocated to CIS programs?*

*§704.411. How will additional or other funds be made available to CIS programs?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503063

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 438-3437



## CHAPTER 745. LICENSING

### SUBCHAPTER F. BACKGROUND CHECKS

#### DIVISION 2. REQUESTING BACKGROUND CHECKS

**40 TAC §§745.615, 745.623, 745.625, 745.626, 745.631, 745.637**

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.615, 745.623, 745.625, and 745.631; and new §745.626 and §745.637, concerning background checks, in its Licensing chapter. The proposed changes are the result of requirements concerning background checks in Senate Bill (SB) 6, 79th Legislature. New §745.615 clarifies that background checks must be requested on all employees, including all employees intended to be hired, who will provide direct care or have direct access to a child in care. The amendment to §745.623 adds requirements that all residential child-care operations must request background checks on-line through the DFPS website and that child day care operations can request background checks on-line or by submitting a paper request. The amendment to §745.625 adds the requirement that background checks must be submitted before a person provides direct care or has direct access to a child in a residential operation. New §745.626 states that if a residential operation does not receive the results of a background check on a person who provides direct care or has direct access to a child in care, the operation may obtain its own criminal history check through the Department of Public Safety (DPS) and if the DPS check verifies no criminal history, it can allow the person unsupervised client access until it receives the results of the DFPS background check. The amendment to §745.631 adds licensed child-care homes to the list of operations that cannot be issued a permit until DFPS receives the results of the applicants background check. New §745.637 states that DFPS will provide the operation requesting the background check with information in our records regarding the person's previous history in residential child care, as long as the information is not confidential.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five- year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that background checks will be conducted prior to people being able to provide direct care or have direct access to a child in residential child-care facilities, which will provide greater protection for children in care. For each of the first five years that the proposed sections will be in effect, DFPS has estimated the following fiscal impact on small or micro residential child-care operations that employ staff that work directly with child in care. In Fiscal Year 2004, residential child-care facilities conducted 40,143 background checks at an average of 71 checks per facility. DFPS will develop new systems to speed up the process of getting the results back to the facilities within the two-day time frame. Considering possible technical difficulties that may occur, DFPS estimates that 10% of these checks may not be received by the residential facilities within the time frame which could result in the facilities having to conduct a check through the DPS website. The DPS background checks cost \$3.00 per check, which will cost the average size residential child-care facility \$21.43 per year. There is no anticipated economic cost to persons who are required to comply with the sections.

Questions about the content of the proposal may be directed to Carol Allen at (512) 438-5339 in DFPS's Licensing Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-335, Department of Family

and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed amendments and new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

The new sections and amendments are proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The new sections and amendments implement the HRC §42.056, as amended by §1.103 of Senate Bill 6, 79th Legislature.

*§745.615. On whom must I request background checks?*

(a) You must request background checks for each person 14 years or older, other than clients of the operation, who will regularly or frequently be present at your operation while children are in care, including:

(1) Employees ~~[;]~~ and applicants you intend to hire that will provide direct care or have direct access to a child in care ~~[including those you intend to hire];~~

(2)-(4) (No change.)

(b)-(c) (No change.)

*§745.623. How do I request a background check?*

(a) You must verify and send us the following identifying information for every person required to be checked in §745.615 of this title (relating to On whom must I request background checks?) ~~[; on a signed Licensing form provided by your local Licensing staff]:~~

(1) Name (last, first, middle), including any maiden or married names or alias;

(2) Date of birth;

(3) Sex;

(4) Social security number;

(5) Current and previous address; ~~[and]~~

(6) Driver's license number; and

(7) ~~[(6)]~~ Race (this information does not have to be verified).

(b) If you operate a child day-care operation, you can complete a request for a background check on-line through the DFPS website or send in a request via a signed Licensing form provided by your local Licensing office.

(c) If you operate a residential child-care facility, you must submit your requests on-line through the DFPS website.

*§745.625. When must ~~[do]~~ I submit a request for a background check?*

(a) You must submit a request for a background check:

(1) When you submit your application for a permit to us;

~~[(2) When you hire a new person, but no later than two business days after the new person is hired or is present in your operation];~~

(2) ~~[(3)]~~ When a non-client resident 14 years old or older lives or moves into your home or operation, or a non-client resident becomes 14 years old;

(3) ~~[(4)]~~ When you apply to be a foster or adoptive parent; and

(4) ~~[(5)]~~ Every 24 months after each person's name was first submitted.

(b) In addition, if you operate a residential child-care operation:

(1) You must submit a background check before you hire a new person who will provide direct care or have direct access to a child in care; and

(2) For an employee who will not provide direct care or have direct access to a child in care, you must submit a background check within two business days after the new person is hired or is present in your operation.

(c) In addition, if you operate a child day-care operation, you must submit a background check within two business days after a new person is hired or is present in your operation.

*§745.626. How soon after I request a background check on a person can that person provide direct care or have direct access to a child in a residential child-care facility?*

(a) If you do not receive the results of the background check within two working days of submission, you may obtain a criminal history check on the person through the Department of Public Safety (DPS) at <http://records.txdps.state.tx.us/>. If your DPS check verifies that the person has no criminal history, you may allow the person to have unsupervised client contact until you receive the results of the background check performed by the DFPS. The results of the criminal history check obtained from DPS must be kept in the person's personnel record.

(b) Otherwise, you may not allow the person to provide direct care or have direct access to a child in care until you receive the results of the person's background check.

(c) For verifying foster homes, foster group homes, and adoptive homes, please see §745.633 of this title (relating to Can a child-placing agency (CPA) verify a foster home, foster group home, or adoptive home prior to receiving the results of the background checks?).

*§745.631. Must Licensing complete the background check(s) before issuing my permit?*

If you are applying to operate a licensed child-care home, a ~~[För]~~ registered child-care home ~~[homes]~~, a listed family home, ~~[homes]~~ an ~~[and]~~ independent foster home ~~[homes]~~ or a ~~[and]~~ foster group home ~~[homes]~~, we must receive the results from the background checks before issuing you ~~[the issuance of]~~ a permit. For all other permits, we may issue a permit to an applicant before we receive the results of the background checks.

*§745.637. What information may I obtain from Licensing's records regarding a person's previous history in a residential child-care operation?*

We will provide you with information from our records regarding a person's previous history in residential child care, as long as the information is not confidential.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503161

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 438-3437



## **TITLE 43. TRANSPORTATION**

### **PART 1. TEXAS DEPARTMENT OF TRANSPORTATION**

#### **CHAPTER 4. EMPLOYMENT PRACTICES**

##### **SUBCHAPTER B. JOB APPLICATION**

##### **PROCEDURES**

##### **43 TAC §4.13**

The Texas Department of Transportation (department) proposes amendments to §4.13, concerning job application procedures.

##### **EXPLANATION OF PROPOSED AMENDMENTS**

Prior to June 17, 2005, Transportation Code, §201.403(a) required the department to open all department positions compensated at or above salary group 21 to applicants from inside and outside the department. This statute was enacted in 1991 under a former classification system. A salary group 21 under the 1991 classification system is now the equivalent to a group B13. The classification system in 1991 also considered group 21 and above to be director positions. The department implemented the statute by adopting §4.13, which requires the department to distribute notice of job vacancies in salary groups B13 and above to the Texas Workforce Commission.

House Bill 1814, 79th Legislature, Regular Session, 2005, amended Transportation Code, §201.403(a), effective June 17, 2005, to require the department to open positions compensated at or above salary group B17 to applicants inside and outside the department. Under the state's current classification system, a director position is considered to begin at group B17.

Consistent with the authority granted by House Bill 1814, and consistent with the state's current classification for director positions, the department proposes an amendment to §4.13 that changes the requirement to distribute notice of vacancies from salary group B13 and above to salary group B17 and above.

##### **FISCAL NOTE**

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendment as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendment. There are no anticipated economic costs for persons required to comply with the section as proposed.

Diana Isabel, Director, Human Resources Division, has certified that there will be no significant impact on local economies or

overall employment as a result of enforcing or administering the amendment.

##### **PUBLIC BENEFIT**

Ms. Isabel has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendment will be to enhance the department's ability to hire employees with critical skills efficiently and in a more expeditious manner. There will be no adverse economic effect on small businesses.

##### **SUBMITTAL OF COMMENTS**

Written comments on the proposed amendment to §4.13 may be submitted to Diana Isabel, Director, Human Resources Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on September 12, 2005.

##### **STATUTORY AUTHORITY:**

The amendment is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

**CROSS REFERENCE TO STATUTE:** Transportation Code, §201.403.

##### *§4.13. Notification.*

The department shall notify its employees and the public of vacant positions by:

(1) distributing job vacancy information statewide to each department area, district, and division office;

(2) distributing notices of vacancies in salary groups B17 [~~B13~~] and above, and all jobs for which the public will be considered, with the Texas Workforce Commission; and

(3) publishing vacancy information as appropriate in newspapers and recognized minority publications of general circulation in the state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 29, 2005.

TRD-200503112

Richard D. Monroe

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 463-8630



## **CHAPTER 7. RAIL FACILITIES**

### **SUBCHAPTER B. CONTRACTS**

##### **43 TAC §7.11**

The Texas Department of Transportation (department) proposes new §7.11, concerning Comprehensive Development Agreements.

##### **EXPLANATION OF PROPOSED NEW SECTION**

House Bill 2702, 79th Legislature, Regular Session, 2005, added Transportation Code, §91.054, to authorize the department to

enter into a comprehensive development agreement that provides for the financing, design, acquisition, construction, maintenance, or operation of a rail facility or system.

Transportation Code, §91.054 authorizes the department, to the extent and in the manner that the department may enter into comprehensive development agreements under Transportation Code, Chapter 223, to enter into comprehensive development agreements under Chapter 91 with regard to rail facilities or systems. Section 91.054 provides that all provisions of Chapter 223 relating to comprehensive development agreements apply to comprehensive development agreements for rail facilities under Chapter 91.

Rules relating to comprehensive development agreements for turnpike or toll projects developed under Chapter 223 are contained in Chapter 27, Subchapter A of this title. As those rules have proven effective for the procurement of comprehensive development agreements for turnpike or toll projects, new §7.11 provides that, to the extent and in the manner that the department may enter into a comprehensive development agreement with respect to a turnpike or toll project under Chapter 27, Subchapter A, the department may enter into a comprehensive development agreement for the financing, design, acquisition, construction, maintenance, or operation of a rail facility or system.

Section 7.11 requires the department to utilize the processes and procedures provided in Chapter 27, Subchapter A when requesting qualifications and proposals or accepting unsolicited proposals for the financing, design, acquisition, construction, maintenance, or operation of a rail facility or system, when evaluating and ranking submissions and proposals, and when selecting the proposal that provides the best value to the department.

As authorized by Transportation Code, §91.054, new §7.11 provides that the department may combine in a comprehensive development agreement a rail facility or system and a turnpike or toll project. Section 7.11 also provides that rail facility and system have the meanings assigned by Chapter 91.

#### FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the new section as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section. The authority to enter into comprehensive development agreements for the financing, design, acquisition, construction, maintenance, or operation of a rail facility or system will be accomplished using existing department staff. There are no anticipated economic costs for persons required to comply with the section as proposed.

Phillip E. Russell, P.E., Director, Texas Turnpike Authority Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

#### PUBLIC BENEFIT

Mr. Russell has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the new section will be to decrease the time required to develop department rail facilities or systems and to facilitate agreements with private participants in projects to develop rail facilities or systems. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed new section may be submitted to Phillip E. Russell, P.E., Director, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on September 12, 2005.

#### STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.003, which provides the commission with the authority to adopt rules necessary to implement Chapter 91.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §91.054.

#### §7.11. Comprehensive Development Agreements.

(a) To the extent and in the manner that the department may enter into a comprehensive development agreement with respect to a turnpike or toll project under Chapter 27, Subchapter A of this title (relating to Policy, Rules, and Procedures for Private Involvement in Department Turnpike Projects), the department may enter into a comprehensive development agreement for the financing, design, acquisition, construction, maintenance, or operation of a rail facility or system.

(b) The department shall utilize the processes and procedures provided in Chapter 27, Subchapter A of this title when considering the use of a comprehensive development agreement, including when:

(1) requesting qualifications and proposals or accepting unsolicited proposals for the financing, design, acquisition, construction, maintenance, or operation of a rail facility or system;

(2) evaluating and ranking submissions and proposals; and

(3) selecting the proposal that provides the best value to the department.

(c) The department may combine in a comprehensive development agreement a rail facility or system and a turnpike or toll project as defined in Transportation Code, §201.001.

(d) In this section, "rail facility" and "system" have the meanings assigned in Transportation Code, Chapter 91.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 29, 2005.

TRD-200503113

Richard D. Monroe

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 463-8630



## CHAPTER 15. TRANSPORTATION PLANNING AND PROGRAMMING

### SUBCHAPTER A. TRANSPORTATION PLANNING

### 43 TAC §15.4

The Texas Department of Transportation (department) proposes amendments to §15.4, concerning the Unified Planning Work Program (UPWP).

#### EXPLANATION OF PROPOSED AMENDMENTS

Section 15.4 currently provides that travel outside the metropolitan area boundary (MAB) by metropolitan planning organization (MPO) staff and other agencies participating in the MPO planning process shall be approved by the department if funded with federal transportation planning funds.

Department approval of travel beyond metropolitan area boundaries is unduly burdensome on the department and the MPO. The proposed amendment removes this requirement and, instead, requires department approval of travel outside Texas. The amendments further provide that travel to Arkansas by the Texarkana MPO staff and travel to New Mexico by the El Paso MPO staff shall be considered in-state travel.

#### FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the section as proposed.

Jim Randall, P.E., Director, Transportation Planning and Programming Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT

Mr. Randall has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be the reduction of administrative expense for the department and MPOs. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Jim Randall, P.E., Director, Transportation Planning and Programming, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on September 12, 2005.

#### STATUTORY AUTHORITY:

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

#### CROSS REFERENCE TO STATUTE: None.

#### §15.4. *Unified Planning Work Program (UPWP).*

(a) Planning activities. Under 23 C.F.R. §450.314, an MPO is required to document planning activities in a UPWP to indicate who will perform the work, the schedule for completing it, and all products that will be produced. The department is responsible for assisting in the development of the UPWP, approving the format of work programs submitted by MPOs, and, where required by federal law or regulation, monitoring an MPO's performance of activities and expenditure of funds under a UPWP. Where monitoring is not required, the department is responsible for reviewing an MPO's activities and expenditure

of funds, and will comment on and make suggestions relating to those activities and expenditures. The department will design a uniform format for UPWPs and reports to be submitted by MPOs. This subsection describes how a UPWP is developed, the contents of a UPWP, how it is approved, and how the department will monitor work programs.

(1) Requirements. An MPO in cooperation with the department and operators of publicly owned transit systems must annually develop a unified planning work program that meets the requirements of 23 C.F.R. Part 420, Subpart A and 23 C.F.R. §450.314.

(2) Prospectus allowed. The metropolitan transportation planning process may include the development of a prospectus that establishes a multiyear framework within which the UPWP is accomplished.

(3) UPWP development. The department will develop a time line for development of the UPWP by the MPOs. Failure to adhere to the time line may result in a delay in the authorization to the MPOs to proceed in incurring costs.

(4) UPWP format. The department, in consultation with the MPOs, shall develop a standard UPWP format to be used by all MPOs. UPWPs submitted in a different format will not be approved.

(5) UPWP approval and revisions. The MPO policy board shall not delegate approval authority of, or subsequent revisions to, the UPWP.

(6) Annual performance and expenditure report. To allow the department to monitor work programs, the MPOs shall prepare and submit an annual performance and expenditure report of progress no later than December 31 of each year. A uniform format for the annual report will be established by the department, in consultation with the MPOs.

(b) Funding. Federal transportation planning funds are available to MPOs to develop the metropolitan transportation plans and transportation improvement programs required by this subchapter. Under 23 C.F.R. §420.111, the use of federal planning funds must be documented by the MPO in a work program acceptable to the FHWA setting out proposed work undertaken with federal planning funds and the estimated cost of this work. A work program acceptable to the FTA is required for planning activities involving mass transportation plans and programs. This subsection describes the requirements for a UPWP related to funding, limitations on the use of federal planning funds for planning work, when the travel costs of persons participating in the metropolitan planning process may be authorized and reimbursed, limitations on the expenditure of funds for planning work outlined in a UPWP, and how federal transportation planning funds will be distributed to MPOs.

(1) Requirements. The UPWP shall reflect transportation planning work tasks to be funded by federal, state, or local transportation, or transportation related (e.g. air quality), planning funds.

(2) Planning work eligibility. The use of federal metropolitan transportation planning funds shall be limited to transportation planning activities affecting the transportation system within the Metropolitan Area Boundary (MAB). If an MPO determines that data collection and analysis activities relating to land use, demographics, or traffic or travel information, conducted outside the MAB, affect the transportation system within the MAB, then those activities may be undertaken using federal planning funds, provided that the activities are specifically identified in an approved UPWP. Any other costs incurred for transportation planning activities outside the MAB will not be eligible for reimbursement.

(3) Authorization for travel outside the state ~~[MAB]~~. Travel outside the State of Texas ~~[Metropolitan Area Boundary]~~ by MPO staff and other agencies participating in the MPO planning process shall be approved by the department if funded with federal transportation planning funds. Approval must be received prior to incurring any costs associated with the actual travel (e.g., registration fee). This provision will not apply if the travel ~~is~~ ~~[was]~~ at the request of the department. Travel to the State of Arkansas by the Texarkana MPO staff and travel to the State of New Mexico by the El Paso MPO staff shall be considered in-state travel.

(4) Reimbursement of travel costs of elected officials. The cost of travel incurred by elected officials will not be eligible for reimbursement with federal transportation planning funds.

(5) Funding limitations. The use of federal transportation planning funds shall be limited to corridor/subarea level planning or multimodal or systemwide transit planning studies. Major investment studies and environmental studies are considered corridor level planning. The use of such funds beyond environmental document preparation or for specific project level planning and engineering (efforts directly related to a specific project instead of a corridor) is not allowed.

(6) Department approval of costs. The MPO shall not incur any costs for work outlined in the UPWP or any subsequent amendments (i.e., adding new work tasks or changing the scope of existing work tasks) prior to receiving approval from the department. Any costs incurred prior to receiving department approval shall not be eligible for reimbursement from federal transportation planning funds.

(7) Expenditure limitations. Costs incurred by the MPO shall not exceed the total budgeted amount of the UPWP without prior approval of the MPO policy board and the department. Costs incurred on individual work tasks shall not exceed that task budget by 25% without prior approval of the MPO policy board and the department. If the costs exceed 25% of the task budget, the UPWP shall be revised, approved by the MPO policy board, and submitted to the department for approval.

(8) Distribution of funds. Federal transportation planning funds will be distributed to the MPOs based on a formula mutually agreed to by the department and FHWA/FTA.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 29, 2005.

TRD-200503114

Richard D. Monroe

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: September 11, 2005

For further information, please call: (512) 463-8630

◆ ◆ ◆



# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 80. MANUFACTURED HOUSING SUBCHAPTER A. CODES AND STANDARDS

##### 10 TAC §80.10

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws the proposed amendment to §80.10 which appeared in the February 25, 2005, issue of the *Texas Register* (30 TexReg 959).

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503122

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: August 1, 2005

For further information, please call: (512) 475-2206



#### SUBCHAPTER B. DEFINITIONS

##### 10 TAC §80.11

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws the proposed amendment to §80.11 which appeared in the February 25, 2005, issue of the *Texas Register* (30 TexReg 959).

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503123

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: August 1, 2005

For further information, please call: (512) 475-2206



#### SUBCHAPTER C. FEE STRUCTURE

##### 10 TAC §80.20

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws the proposed amendment to §80.20 which appeared in the February 25, 2005, issue of the *Texas Register* (30 TexReg 959).

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503124

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: August 1, 2005

For further information, please call: (512) 475-2206



#### SUBCHAPTER D. STANDARDS AND REQUIREMENTS

##### 10 TAC §§80.50 - 80.52, 80.63

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws the proposed repeals to §§80.50 - 80.52, and 80.63 which appeared in the February 25, 2005, issue of the *Texas Register* (30 TexReg 988).

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503131

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: August 1, 2005

For further information, please call: (512) 475-2206



##### 10 TAC §§80.53 - 80.59, 80.62, 80.64, 80.66

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws the proposed amendments to §§80.53 - 80.56, 80.58, 80.62, 80.64, 80.66 and new §80.57 and §80.59 which appeared in the February 25, 2005, issue of the *Texas Register* (30 TexReg 959).

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503125

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: August 1, 2005

For further information, please call: (512) 475-2206



#### SUBCHAPTER E. GENERAL REQUIREMENTS

##### 10 TAC §§80.119 - 80.133, 80.135

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws proposed new

§80.129 and the amendments to §§80.119 - 80.128, 80.130 - 80.133 and 80.135 which appeared in the February 25, 2005, issue of the *Texas Register* (30 TexReg 959).

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503126

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: August 1, 2005

For further information, please call: (512) 475-2206



#### **10 TAC §§80.129, 80.134, 80.136, 80.137**

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws the proposed repeals to §§80.129, 80.134, 80.136, and 80.137 which appeared in the February 25, 2005, issue of the *Texas Register* (30 TexReg 988).

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503132

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: August 1, 2005

For further information, please call: (512) 475-2206



### **SUBCHAPTER F. CONSUMER NOTICE REQUIREMENTS**

#### **10 TAC §80.181, §80.182**

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws the proposed repeals to §80.181 and §80.182 which appeared in the February 25, 2005, issue of the *Texas Register* (30 TexReg 988).

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503133

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: August 1, 2005

For further information, please call: (512) 475-2206



#### **10 TAC §80.183**

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws the proposed amendment to §80.183 which appeared in the February 25, 2005, issue of the *Texas Register* (30 TexReg 959).

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503127

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: August 1, 2005

For further information, please call: (512) 475-2206



### **SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION**

#### **10 TAC §§80.200, 80.202 - 80.204, 80.206 - 80.209**

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws the proposed repeals to §§80.200, 80.202 - 80.204, and 80.206 - 80.209 which appeared in the February 25, 2005, issue of the *Texas Register* (30 TexReg 988).

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503134

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: August 1, 2005

For further information, please call: (512) 475-2206



#### **10 TAC §80.201**

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws the proposed amendment to §80.201 which appeared in the April 15, 2005, issue of the *Texas Register* (30 TexReg 2159).

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503135

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: August 1, 2005

For further information, please call: (512) 475-2206



#### **10 TAC §80.205**

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws the proposed amendment to §80.205 which appeared in the February 25, 2005, issue of the *Texas Register* (30 TexReg 959).

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503128

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: August 1, 2005

For further information, please call: (512) 475-2206



### **SUBCHAPTER H. TABLES AND FIGURES**

#### **10 TAC §80.240**

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws proposed new §80.240 which appeared in the February 25, 2005, issue of the *Texas Register* (30 TexReg 959).

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503129

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: August 1, 2005

For further information, please call: (512) 475-2206

◆ ◆ ◆

#### **SUBCHAPTER I. FORMS**

#### **10 TAC §80.260**

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs withdraws proposed new §80.260 which appeared in the February 25, 2005, issue of the *Texas Register* (30 TexReg 959).

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503130

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: August 1, 2005

For further information, please call: (512) 475-2206

◆ ◆ ◆

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

#### CHAPTER 251. REGIONAL PLANS-- STANDARDS

##### 1 TAC §251.6

The Commission on State Emergency Communications (CSEC) adopts an amendment to §251.6, concerning guidelines for submission requests from councils of governments on strategic plans, amendments and allocation of equalization surcharge funds, without changes to the proposed text as published in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2817).

The adopted amendments remove the restriction on recorder channel capacity; raise the price cap to \$15,000 for a two-position public safety answering point (PSAP) and \$25,000 for PSAPs with three or more positions; and remove the requirement for submission of a recorder worksheet. As amended, Rule 251.6 reflects the review by CSEC staff and the Texas Association of Regional Councils (TARC) of the need for increased capacity recording equipment and the costs thereof.

No comments were received regarding the adoption of the amendment.

The amendment is adopted pursuant to the Texas Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075; which authorize CSEC to plan, develop, fund, and provide provisions for the enhancement of effective and efficient 9-1-1 service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503119

Paul Mallett

Executive Director

Commission on State Emergency Communications

Effective date: August 21, 2005

Proposal publication date: May 13, 2005

For further information, please call: (512) 305-6933



##### 1 TAC §251.12

The Commission on State Emergency Communications (CSEC) adopts an amendment to §251.12, concerning contracts for

9-1-1 services, without changes to the proposed text as published in the June 10, 2005, issue of the *Texas Register* (30 TexReg 3387).

The adopted amendments remove an outdated reference to the 76th Texas Legislature, correct an erroneous citation to the Health and Safety Code, and remove the example contract from current §251.12. As amended, §251.12 will more accurately reflect current law and reduce the delay in executing the biennial contracts by allowing CSEC to incorporate any new Legislative requirements without having to further modify §251.12. The example contract is being placed in a CSEC Program Policy Statement.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Health and Safety Code, Chapter 771, §§771.055, 771.056, 771.071, 771.0711, 771.072, 771.073, 771.075, 771.078 which authorize the Commission to adopt rules, policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503118

Paul Mallett

Executive Director

Commission on State Emergency Communications

Effective date: August 21, 2005

Proposal publication date: June 10, 2005

For further information, please call: (512) 305-6933



#### CHAPTER 255. FINANCE

##### 1 TAC §255.2

The Commission on State Emergency Communications (CSEC) adopts amendments to §255.2, concerning the definition of intrastate long-distance service with changes to the text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 453).

Rule 255.2 is adopted with minor amendments as part of its Rule Review of Chapter 255 pursuant to Government Code §2001.039. The rule continues to be essential to CSEC's operations and is required by statute.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Government Code §2001.039 and Health and Safety Code §771.051 and §771.072.

§255.2. *Definition of Intrastate Long-Distance Service.*

Intrastate long-distance service means intrastate interexchange electronic or electrical transmission, conveyance, routing, or reception of sounds, signals, data or information utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, or any other methods now in existence or that may be devised. The storage of data or information for subsequent retrieval, or the processing or reception and processing of data or information intended to change its form or content are not included in intrastate long-distance service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503117

Paul Mallett

Executive Director

Commission on State Emergency Communications

Effective date: August 21, 2005

Proposal publication date: February 4, 2005

For further information, please call: (512) 305-6933



## **TITLE 10. COMMUNITY DEVELOPMENT**

### **PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

#### **CHAPTER 33. MULTIFAMILY HOUSING REVENUE BOND RULES**

##### **10 TAC §§33.1 - 33.10**

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes, the repeal of §§33.1 - 33.10, concerning the Multifamily Housing Revenue Bond Rules, as published in the June 24, 2005, issue of the *Texas Register* (30 TexReg 3691).

These sections are repealed in order to implement changes that will effectively improve the 2006 Private Activity Bond Program.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503186

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Effective date: August 21, 2005

Proposal publication date: June 24, 2005

For further information, please call: (512) 475-4595



##### **10 TAC §§33.1 - 33.10**

The Texas Department of Housing and Community Affairs (the "Department") adopts new §§33.1 - 33.10, concerning the Multifamily Housing Revenue Bond Rules. Sections 33.2, and 33.6, are adopted with administrative changes to the text as published in the June 24, 2005, issue of the *Texas Register* (30 TexReg 3691). Sections 33.1, 33.3 - 33.5, and 33.7 - 33.10 are adopted without changes and will not be republished.

The new sections are adopted in order to implement changes that will effectively improve the 2006 Private Activity Bond Program and make administrative corrections.

The department received no public comment upon publication of the proposed rules in the *Texas Register* and received no comment at the public hearing held by the department on items that relate directly to the multifamily housing revenue bond rules.

The new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, article or statutes are affected by the new sections.

##### **§33.2. Authority.**

The Department receives its authority to issue Bonds from Chapter 2306 of the Texas Government Code. All Bonds issued by the Department must conform to the requirements of the Act. Notwithstanding anything herein to the contrary, tax-exempt Bonds which are issued to finance the Development of multifamily rental housing are specifically subject to the requirements of the laws of the State of Texas, including but not limited to Chapter 2306 and Chapter 1372 of the Texas Government Code relating to Private Activity Bonds, and to the requirements of the Code (as defined in this chapter).

##### **§33.6. Application Procedures, Evaluation and Approval.**

(a) Application Costs, Costs of Issuance, Responsibility and Disclaimer. The Applicant shall pay all costs associated with the preparation and submission of the Application--including costs associated with the publication and posting of required public notices--and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the Application process, the Applicant is solely responsible for determining whether to proceed with the Application, and the Department disclaims any and all responsibility and liability in this regard.

(b) Pre-application. An Applicant who requests financing from the Department for a Development shall submit a pre-application in a format prescribed by the Department. Within fourteen (14) days of the Department's receipt of the pre-application, the Department will be responsible for federal, state, and local community notifications of the proposed Development. Upon review of the pre-application, if the Development is determined to be ineligible for Bond financing by the Department, the Department will send a letter to the Applicant explaining the reason for the ineligibility. If the Development is determined to be eligible for Bond financing by the Department, the Department will score and rank the pre-application based on the Private Activity Bond Program Scoring Criteria as described in subsection (d) of this section. The Department will score and rank the pre-application with higher scores ranking higher within each priority defined by §1372.0321, Texas Government Code. All Priority 1 Applications will be ranked above all Priority 2 Applications which will be ranked above all Priority 3 Applications, regardless of score, reflecting a priority structure which gives consideration to the income levels of the tenants and the rent levels of the units consistent with Section 2306.359. This priority ranking will be used throughout the

calendar year. In the event two or more Applications receive the same score, the Department will use, as a tie-breaking mechanism, a priority first for Applications involving rehabilitation; then if a tie still exists, the Application with the greatest number of points awarded for Quality and Amenities for the Development; then if a tie still exists, the Department will grant preference to the pre-application with the lower number of net rentable square feet per bond amount requested. Pre-Applications must meet the threshold requirements as stated in the Private Activity Bond Program Threshold Requirements as set out in subsection (c) of this section. The Private Activity Bond Program Threshold Requirements will be posted on the Department's website. After scoring, the Development and the proposed financing structure will be presented to the Department's Board for consideration of a resolution declaring the Department's intent to issue Bonds (the "inducement resolution") with respect to the Development. Department staff, for good cause, may recommend that the Board not approve an inducement resolution for an Application. After Board approval of the inducement resolution, the scored and ranked Applications will be submitted to the Texas Bond Review Board for its lottery, waiting list or carryforward processing. The Texas Bond Review Board will draw the number of lottery numbers that equates to the number of eligible Applications submitted by the Department for participation in lottery. The lottery numbers drawn will not equate to a specific Development. The Texas Bond Review Board will thereafter assign the lowest lottery number drawn to the highest scored and ranked Application as previously determined by the Department. The Texas Bond Review Board will issue reservations of allocation for Applications submitted for the waiting list or carryforward in the order determined by the Department. The criteria by which a Development may be deemed to be eligible or ineligible are explained below in subsection (g) of this section, entitled Evaluation Criteria. The Private Activity Bond Program Scoring Criteria will be posted on the Department's website. The pre-application shall consist of the following information:

- (1) Completed Current Uniform Application forms in the format required by the Department;
- (2) Texas Bond Review Board's Residential Rental Attachment;
- (3) Relevant Development Information;
- (4) Certification of Local Elected Official request for neighborhood organization information and Public Notification Information;
- (5) Certification and agreement to comply with the Department's rules;
- (6) Agreement of responsibility of all cost incurred;
- (7) An organizational chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant;
- (8) Evidence that the Applicant and principals are registered with the Texas Secretary of State, or if the Applicant has not yet been formed, evidence that the name of the Applicant is reserved with the Secretary of State;
- (9) Organizational documents such as partnership agreements and articles of incorporation, as applicable, for the Applicant and its principals;
- (10) Documentation of non-profit status if applicable; Evidence of good standing from the Comptroller of Public Accounts of the State of Texas for the Applicant and its principals; Corporate resumes and individual resumes of the Applicant and any principals;

(11) A copy of an executed earnest money contract between the Applicant and the seller of the Property. For all Applications submitted the earnest money contract must be in effect at the time of submission of the application and expire no earlier than December 1 of the year preceding the applicable program year for lottery Applications and expire no earlier than 120 days after the date of submission for waiting list and carryforward Applications. The earnest money contract must stipulate and provide for the Applicant's option to extend the contract expiration date through March 1 of the program year for lottery Applications or option to extend an additional 120 days from the initial expiration for waiting list and carryforward Applications, subject only to the seller's receipt of additional earnest money or extension fees, so that the Applicant will have site control at the time a reservation of allocation is granted. If the Applicant owns the Property, a copy of the recorded warranty deed is required;

(12) Evidence of zoning appropriate for the proposed use, application for the appropriate zoning or statement that no zoning is required;

(13) A local map showing the location of the proposed Property site;

(14) A boundary survey or subdivision plat which clearly identifies the location and boundaries of the subject Property;

(15) Name, address and telephone number of the Seller of the Property;

(16) Construction draw and lease-up proforma for Developments involving new construction;

(17) Past two years' operating statements for existing Developments;

(18) Current market information which includes rental comparisons;

(19) Documentation of local Section 8 utility allowances;

(20) Verification/Evidence of delivery of federal, state, and local community notifications;

(21) Self-Scoring Criteria; and

(22) Such other items deemed necessary by the Department per individual application.

(c) Pre-Application Threshold Requirements.

(1) As the Department reviews the Application, the Department will use the following assumptions, even if not reflected in the Application. Prequalification Assumptions:

(A) Development Feasibility:

(i) Debt Coverage Ratio must be greater than or equal to 1.10;

(ii) Annual Expenses must be at least \$3,800 per Unit or \$3.75 per square foot;

(iii) Deferred Developer Fees are limited to 80% of Developer's Fees;

(iv) Contractor Fee are limited to 6% of direct costs plus site work cost;

(v) Overhead is limited to 2% of direct costs plus site work cost;

(vi) General Requirements are limited to 6% of direct costs plus site work cost;

(vii) Developer Fees cannot exceed 15% of the project's Total Eligible Basis

(B) Construction Costs Per Unit Assumption. The acceptable range is \$55 to 65 per Unit for general population developments and \$55 to \$75 for elderly developments (Acquisition/Rehab developments are exempt from this requirement);

(C) Interest Rate Assumption. 6.00% for 30 year financing and 6.75% for 40 year financing;

(D) Size of Units (Acquisition/Rehab developments are exempt from this requirement);

(i) One bedroom Unit must be greater than or equal to 650 square feet for family and 550 square feet for senior Units.

(ii) Two bedroom Unit must be greater than or equal to 900 square feet for family and 750 square feet for senior Units.

(iii) Three bedroom Unit must be greater than or equal to 1,000 square feet for family.

(2) Appropriate Zoning. Evidence of appropriate zoning for the proposed use or evidence of application made and pending decision;

(3) Executed Site Control. Properly executed and escrow receipted site control through 12/1/05 with option to extend through 3/1/06 for lottery Applications or 120 days from date of Application submission with option to extend an additional 120 days from the initial expiration for waiting list and carryforward Applications;

(4) Previous Participation and Authorization to Release Credit Information (located in the uniform application);

(5) Current Market Information (must support affordable rents);

(6) Completed current TDHCA Uniform Application and application exhibits;

(7) Completed Multifamily Rental Worksheets;

(8) Certification of Local Elected Official request for neighborhood organization information and Public Notification Information (see application package);

(9) Relevant Development Information (see application package);

(10) Completed 2006 Bond Review Board Residential Rental Attachment;

(11) Signed letter of Responsibility for All Costs Incurred;

(12) Signed Mortgage Revenue Bond Program Certification Letter;

(13) Evidence of Paid Application Fees (\$1,000 to TDHCA, \$1,500 to Vinson and Elkins and \$5,000 to Bond Review Board);

(14) Boundary Survey or Plat;

(15) Local Area map showing the location of the Property and Community Services/Amenities within a three (3) mile radius;

(16) Utility Allowance from the Appropriate Local Housing Authority;

(17) Organization Chart with evidence of Entity Registration or Reservation with the Secretary of State; and

(18) Required Notification. Evidence of notifications shall include a copy of the exact letter and other materials that were sent to

the individual or entity, a sworn affidavit stating that they made all the required notifications prior to the deadlines and a copy of the entire mailing list (including names and complete addresses) of all the recipients. Proof of notification must not be older than three months prior to the date of Application submission date. Notification must be sent to all the following individuals and entities (If the QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted reflect a notification process that is different from the process listed below, then the QAP and Rules will override the notification process listed below):

(A) State Senator and Representative that represents the community containing the development;

(B) Presiding Officer of the governing body of any municipality containing the development and all elected members of that body (Mayor, City Council members);

(C) Presiding Officer of the governing body of the county containing the development and all elected members of that body (County Judge and/or Commissioners);

(D) School District Superintendent of the school district containing the development;

(E) Presiding Officer of the School Board of Trustees of the school district containing the development; and

(F) Evidence must be provided that a letter requesting information on neighborhood organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site and meeting the requirements of "Local Elected Official Notification" as outlined in the Application was sent no later than twenty-one (21) days prior to the Application submission to the local elected official for the city or if located outside of a city, then the county where the Development is proposed to be located. If the Development is located in a jurisdiction that has district based local elected officials, or both at-large and district based local elected officials, the notification must be made to the city council member or county commissioner representing that district; if the Development is located in a jurisdiction that has only at-large local elected official, the notification must be made to the mayor or county judge for the jurisdiction. A copy of the reply letter or other official third-party documentation from the local elected official must be provided. For urban/exurban areas, entities identified in the letters from the local elected official whose listed address has the same zip code as the zip code for the Development must be provided with written notification, and evidence of the notification must be provided. If any other zip codes exist within a half mile of the Development site, then all entities identified in the letters with adjacent zip codes must also be provided with written notification, and evidence of that notification must be provided. For rural areas, all entities identified in the letters whose listed address is within a half mile of the proposed Development site must be provided with written notification, and evidence of that notification must be provided. If no response is received from the local elected official by seven (7) days prior to Application submission then the Applicant must submit a statement attesting to that fact in the format provided by the Department as part of the Application.

(d) Pre-Application Scoring Criteria.

(1) Construction Cost Per Unit includes: site work, contractor profit, overhead, general requirements and contingency. Calculation will be hard costs per square foot of net rentable area. Must be greater than or equal to \$60 per square foot (1 point) (Acquisition/Rehab will automatically receive (1 point)).

(2) Size of Units. Average size of all Units combined in the development must be greater than or equal to 950 square foot for family

and must be greater than or equal to 750 square foot for elderly (5 points). (Acquisition/Rehab developments will automatically receive 5 points).

(3) Period of Guaranteed Affordability for Low Income Tenants. Add 10 years of affordability after the extended use period for a total affordability period of 40 years (1 point).

(4) Quality and Amenities ((maximum 35 points) Acquisition/Rehab (with no demolition/new construction) will receive double points not to exceed 35 points)). (If there are changes to the Application prior to closing that have an adverse affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). Substitutions in amenities will be allowed as long as the overall score is not affected). Applications in which Developments provide specific qualities and amenities at no extra charge to the tenant will be awarded points as follows:

- (A) Laundry Connections (2 points);
- (B) Self-cleaning or continuous cleaning ovens (1 point);
- (C) Microwave Ovens (in each Unit) (1 point);
- (D) Refrigerator with icemaker (1 point);
- (E) Laundry equipment (washer and dryers) for each Unit (3 points);
- (F) Storage Room of approximately nine (9) square feet or greater (does not have to be in the unit but must be on the property) (1 point);
- (G) Covered entries (1 point);
- (H) Nine foot ceilings (1 point);
- (I) Covered patios or covered balconies (1 point);
- (J) Covered Parking (at least one per Unit) (3 points);
- (K) Garages (equal to at least 35% of Units) (5 points);
- (L) Ceiling Fans in all rooms except bathrooms and kitchens (light with ceiling fan in all bedrooms) (1 point);
- (M) 75% or Greater Masonry (includes rock, stone, brick, stucco and cementitious board product; excludes EIFS) (5 points);
- (N) Thirty year architectural shingle roofing (1 point);
- (O) Use of energy efficient alternative construction materials (structurally insulated panels) with wall insulation at a minimum of R-20 (3 points);
- (P) R-15 Walls/R-30 Ceilings (rating of wall system) (3 points);
- (Q) 14 SEER HVAC or evaporative coolers in dry climates for new construction or radiant barrier in the attic for the rehabilitation (3 points);
- (R) Energy Star or equivalently rated kitchen appliances (2 points);
- (S) Playground and Equipment or Covered Community Porch (3 points);
- (T) BBQ Grills and Tables (one each per 50 Units) or Walking Trail (minimum length of 1/4 mile) (3 points);

(U) Full Perimeter Fencing with controlled gate access (3 points);

(V) Computers with internet access/Business Facilities (8 hour availability) (2 points);

(W) Game Room or TV Lounge (2 points);

(X) Furnished and staffed children's activity center (3 points);

(Y) Horseshoe pit, putting green or shuffleboard court (only qualified elderly developments) (2 points);

(Z) Workout Facilities or Library (with comparable square footage as workout facilities) (2 points).

(5) Tenant Services (Tenant Services shall include only direct costs (tenant services contract amount, supplies for services, internet connections, initial cost of computer equipment, etc.). Indirect costs such as overhead and utility allocations may not be included).

(A) \$10.00 per Unit per month (10 points);

(B) \$7.00 per Unit per month (5 points);

(C) \$4.00 per Unit per month (3 points).

(6) Zoning appropriate for the proposed use or no zoning required (appropriate zoning for the intended use must be in place at the time of application submission date, September 6, 2005 (Applications submitted for lottery) or first Monday of each month (Applications submitted for waiting list and carryforward), in order to receive points) (5 points).

(7) Proper Site Control (as defined in §33.3(21) of this title, control through 12/01/05 with option to extend through 03/01/06 (Applications submitted for lottery) or 120 days after the applicable submission date with option to extend an additional 120 days after the initial expiration (Applications submitted for waiting list and carryforward) (all information must be correct at the time of the Application submission date, September 6, 2005 (Applications submitted for lottery) or first Monday of each month (Applications submitted for waiting list or carryforward), in order to receive points) (5 points).

(8) Development Support/Opposition (Maximum net points of +24 to -24. Each letter will receive a maximum of +3 to -3. All letters received by 5:00 PM, October 7, 2005 (Applications submitted for lottery) or fourteen (14) days prior to the date of the Board meeting at which the Application will be considered (Applications submitted for waiting list and carryforward) will be used in scoring).

(A) Texas State Senator and Texas State Representative (maximum +6 to -6 points);

(B) Presiding officer of the governing body of any municipality containing the Development and the elected district member of the governing body of the municipality containing the Development (maximum +6 to -6 points);

(C) Presiding officer of the governing body of the county containing the Development and the elected district member of the governing body of the county containing the Development (if the site is not in a municipality, these points will be doubled) (maximum +6 to -6 points);

(D) Local School District Superintendent and Presiding Officer of the Board of Trustees for the School district containing the Development (maximum +6 to -6 points).

(9) Penalties for Missed Deadlines in the Previous Year's Bond and/or Tax Credit program year. (This includes approved and used extensions) (-1 point with maximum 3 point deduction).



(10) Local Political Subdivision Development Funding Commitment that enables additional Units for the Very Low Income (CDBG, HOME or other funds through local political subdivisions) (must be greater than or equal to 2% of the bond amount requested and must provide at least 5% of the total Development Units at or below 30% AMFI or an additional 5% of the total Development Units if the Applicant has chosen category Priority 1B on the residential rental attachment) (2 points).

(11) Proximity to Community Services/Amenities (Community services/amenities within three (3) miles of the site. A map must be included with the Application showing a three (3) mile radius notating where the services/amenities are located) (maximum 12 points)

- (A) Full service grocery store or supermarket (1 point);
- (B) Pharmacy (1 point);
- (C) Convenience store/mini-market (1 point);
- (D) Retail Facilities (Target, Wal-Mart, Home Depot, etc.) (1 point);
- (E) Bank/Financial Institution (1 point);
- (F) Restaurant (1 point);
- (G) Indoor public recreation facilities (community center, civic center, YMCA) (1 point);
- (H) Outdoor public recreation facilities (park, golf course, public swimming pool) (1 point)
- (I) Fire/Police Station (1 point);
- (J) Medical Facilities (hospitals, minor emergency, doctor or dentist offices) (1 point);
- (K) Public Library (1 point);
- (L) Public Transportation (1/2 mile from site) (1 point);
- (M) Public School (only one school required for point and only eligible with general population developments) (1 point) .

(12) Proximity to Negative Features (adjacent to or within 300 feet of any part of the Development site boundaries). A map must be included with the application showing where the feature is located. Developer must provide a letter stating there are none of the negative features listed below within the stated area if that is correct. (maximum -20 points)

- (A) Junkyards (5 points);
- (B) Active Railways (excluding light rail) (5 points);
- (C) Heavy industrial/manufacturing plants (5 points);
- (D) Solid Waste/Sanitary Landfills (5 points);
- (E) High Voltage Transmission Towers (5 points).

(13) Acquisition/Rehabilitation Developments will receive thirty (30) points. This will include the demolition of old buildings and new construction of the same number of units if allowed by local codes or less units to comply with local codes (not to exceed 252 total units).

(14) Preservation Developments will receive ten (10) points. This includes rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past ten years. Evidence must be provided.

(e) Financing Commitments. After approval by the Board of the inducement resolution, and before submission of a final application, the Applicant will be solely responsible for making appropriate arrangements with financial institutions which are to be involved with the issuance of the Bonds or the financing of the Development, and to begin the process of obtaining firm commitments for financing from each of the financial institutions involved.

(f) Final Application. An Applicant who elects to proceed with submitting a final Application to the Department must submit the Volumes I and II of the Application prior to receipt of a reservation of allocation from the Texas Bond Review Board and the Volumes III and VI of the Application and such supporting material as is required by the Department at least sixty (60) days prior to the scheduled meeting of the Board at which the Development and the Bond issuance are to be considered, unless the Department directs the Applicant otherwise in writing. The final application must adhere to the Department's QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted. The Department may determine that supporting materials listed in paragraphs (1) - (42) of this subsection shall be provided subsequent to the final Application deadline in accordance with a schedule approved by the Department. Failure to provide any supporting materials in accordance with the approved schedule may be grounds for terminating the Application and returning the reservation to the Texas Bond Review Board. The final application and supporting material shall consist of the following information:

(1) A Public Notification Sign shall be installed on the proposed Development site no later than thirty (30) days after the submission of Volume I and II of the Tax Credit Application to the Department (pictures and invoice receipts must be submitted as evidence of installation within thirty (30) days of the submission). The sign must be at least four (4) feet by eight (8) feet in size and be located within twenty (20) feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day the TDHCA Board takes final action on the Application for the development. The information and lettering on the sign must meet the requirements identified in the Application. As an alternative to installing a Public Notification Sign and at the same required time, the Applicant may instead, at the Applicant's Option, mail written notification to all addresses located within the footage distance required by the local municipality zoning ordinance or 1,000 feet, if there is no local zoning ordinance or if the zoning ordinance does not require notification, of any part of the proposed Development site. This written notification must include the information otherwise required for the sign. If the Applicant chooses to provide this mailed notice in lieu of signage, the final Application must include a map of the proposed Development site and mark the 1,000 foot or local ordinance area showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. The Applicant must mail notice to any public official that changed from the submission of the pre-application to the submission of the final application and any neighborhood organization that is known and was not notified at the time of the pre-application submission. No additional notification is required unless the Applicant submitted a change in the Application that reflects a total Unit increase greater than 10%, an increase greater than 10% for any given AMFI, or a change in the population being served (elderly, general population or transitional);

(2) Completed Uniform Application forms in the format required by the Department;

(3) Certification of no changes from the pre-application to the final application. If there are changes to the Application that have

an adverse affect on the score and ranking order and that would have resulted in the application being placed below another application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points);

(4) Certification and agreement to comply with the Department's rules;

(5) A narrative description of the Development;

(6) A narrative description of the proposed financing;

(7) Firm letters of commitment from any lenders, credit providers, and equity providers involved in the transaction;

(8) Documentation of local Section 8 utility allowances;

(9) Site plan;

(10) Unit and building floor plans and elevations;

(11) Complete construction plans and specifications;

(12) General contractor's contract;

(13) Completion schedule;

(14) Copy of a recorded warranty deed if the Applicant already owns the Property, or a copy of an executed earnest money contract between the Applicant and the seller of the Property if the Property is to be purchased;

(15) A local map showing the location of the Property;

(16) Photographs of the Site;

(17) Survey with legal description;

(18) Flood plain map;

(19) Evidence of zoning appropriate for the proposed use from the appropriate local municipality that satisfies one of these subparagraphs (A) - (C) of this paragraph:

(A) no later than fourteen (14) days before the Board meets to consider the transaction, the Applicant must submit to the Department written evidence that the local entity responsible for initial approval of zoning has approved the appropriate zoning and that they will recommend approval of the appropriate zoning to the entity responsible for final approval of zoning decisions;

(B) provide a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision which does not have a zoning ordinance;

(C) a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating the Development is permitted under the provision of the zoning ordinance that apply to the location of the Development or that there is not a zoning requirement.

(20) Evidence of the availability of utilities;

(21) Copies of any deed restrictions which may encumber the Property;

(22) A Phase I Environmental Site Assessment performed in accordance with the Department's Environmental Site Assessment Rules and Guidelines (§1.35 of this title);

(23) Title search or title commitment;

(24) Current tax assessor's valuation or tax bill;

(25) For existing Developments, current insurance bills;

(26) For existing Developments, past two (2) fiscal year end development operating statements;

(27) For existing Developments, current rent rolls;

(28) For existing Developments, substantiation that income-based tenancy requirements will be met prior to closing;

(29) A market study performed in accordance with the Department's Market Analysis Rules and Guidelines (§1.33 of this title);

(30) Appraisal of the existing or proposed Development performed in accordance with the Department's Underwriting Rules and Guidelines (§1.32 of this title);

(31) Statement that the Development Owner will accept tenants with Section 8 or other government housing assistance;

(32) An organizational chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant;

(33) Evidence that the Applicant and principals are registered with the Texas Secretary of State, as applicable;

(34) Organizational documents such as partnership agreements and articles of incorporation, as applicable, for the Applicant and its principals;

(35) Documentation of non-profit status if applicable;

(36) Evidence of good standing from the Comptroller of Public Accounts of the State of Texas for the Applicant and its principals;

(37) Corporate resumes and individual resumes of the Applicant and any principals;

(38) Latest two (2) annual financial statements and current interim financial statement for the Applicant and its principals;

(39) Latest income tax filings for the Applicant and its principals;

(40) Resolutions or other documentation indicating that the transaction has been approved by the general partner;

(41) Resumes of the general contractor's and the property manager's experience; and

(42) Such other items deemed necessary by the Department per individual application.

(g) Evaluation Criteria. The Department will evaluate the Development for eligibility at the time of pre-application, and at the time of final Application. If there are changes to the Application that have an adverse affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the conditions set out in paragraphs (1) - (6) of this subsection in order for a Development to be considered eligible:

(1) The proposed Development must further meet the public purposes of the Department as identified in the Act.

(2) The proposed Development and the Applicant and its principals must satisfy the Department's Underwriting Rules and Guidelines (§1.32 of this title). The pre-application must include sufficient information for the Department to establish that the Underwriting Guidelines can be satisfied. The final Application will be

thoroughly underwritten according to the Underwriting Rules and Guidelines (§1.32 of this title).

(3) The Development must not be located on a site determined to be unacceptable for the intended use by the Department.

(4) Any Development in which the Applicant or principals of the Applicant have an ownership interest must be found not to be in Material Non-Compliance under the compliance Rules in effect at the time of pre-application submission. Any corrective action documentation affecting the Material Non-compliance status score must be submitted to the Department no later than thirty (30) days prior to final application submission.

(5) Neither the Applicant nor any principals of the Applicant is, at the time of Application:

(A) barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or

(B) has been convicted of a state or federal crime involving fraud, bribery, theft, misrepresentation, misappropriation of funds, or other similar criminal offenses within fifteen (15) years; or

(C) is subject to enforcement action under state or federal securities law, action by the NASD, subject to a federal tax lien, or the subject of an enforcement proceeding with any governmental entity; or

(D) neither applicant nor any principals of the applicant have a development under their ownership or control with a Material Non-compliance score as set out in the Department's Compliance Monitoring Policies and Procedures (§60.1 of this title); or

(E) otherwise disqualified or debarred from participation in any of the Department's programs.

(6) Neither the Applicant nor any of its principals may have provided any fraudulent information, knowingly false documentation or other intentional or negligent misrepresentation in the Application or other information submitted to the Department.

(h) Bond Documents. After receipt of the final Application, bond counsel for the Department shall draft Bond documents which conform to the state and federal laws and regulations which apply to the transaction.

(i) Public Hearings; Board Decisions. For every Bond issuance, the Department will hold a public hearing in accordance with §2306.0661, Texas Government Code and §147(f) of the Code, in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant. The Board's decisions on approvals of proposed Developments will consider all relevant matters. Any topics or matters, alone or in combination, may or may not determine the Board's decision. The Department's Board will consider the following topics in relation to the approval of a proposed Development:

- (1) The Development Owner market study;
- (2) The location, including supporting broad geographic dispersion;
- (3) The compliance history of the Development Owner;
- (4) The financial feasibility;
- (5) The inclusive capture rate as described under Chapter 1, §1.32(g)(2) of this title;

(6) The Development's proposed size and configuration in relation to the housing needs of the community in which the Development is located;

(7) The Development's proximity to other low income Developments;

(8) The availability of adequate public facilities and services;

(9) The anticipated impact on local school districts, giving due consideration to the authorized land use;

(10) Zoning and other land use considerations;

(11) Fair Housing law, including affirmatively furthering fair housing;

(12) The Applicant and/or Developer's efforts to engage the neighborhood;

(13) The housing needs of the community, area, region and state;

(14) Consistency with local needs, including consideration of revitalization or preservation needs;

(15) Providing integrated, affordable housing for individuals and families with different levels of income;

(16) Meeting a compelling housing need;

(17) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes and the policies of Chapter 2306, Texas Government Code.

(j) Approval of the Bonds.

(1) Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by the Department's staff, will consider the approval of the Bond issuance, final Bond documents and, in the instance of privately placed Bonds, the pricing of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 and §1.8 of this title. The Department's conduit housing transactions will be processed in accordance with the Texas Bond Review Board rules Title 34, Part 9, Chapter 181, Subchapter A and Chapter 1372, Texas Government Code. The Bond issuance must receive an approving opinion from the Department's bond counsel with respect to the legality and validity of the Bonds and the security therefore, and in the case of tax-exempt Bonds, with respect to the excludability from gross income for federal income tax purposes of interest on the Bonds.

(2) Alternative Dispute Resolution Policy. In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator (fax: (512)

475-3978). For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 Texas Administrative Code §1.17.

(k) Local Permits. Prior to the closing of the Bonds, all necessary approvals, including building permits, from local municipalities, counties, or other jurisdictions with authority over the Development must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be provided to the Department.

(l) Closing. Once all approvals have been obtained and Bond documents have been finalized to the respective parties' satisfaction, the Bond transaction will close. Upon satisfaction of all conditions precedent to closing, the Department will issue Bonds in exchange for payment thereof. The Department will then loan the proceeds of the Bonds to the Applicant and disbursements of the proceeds may begin.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503185

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Effective date: August 21, 2005

Proposal publication date: June 24, 2005

For further information, please call: (512) 475-4595



## **TITLE 19. EDUCATION**

### **PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD**

#### **CHAPTER 1. AGENCY ADMINISTRATION**

##### **SUBCHAPTER E. EMPLOYEE SCHOLARSHIPS**

###### **19 TAC §§1.116 - 1.120**

The Texas Higher Education Coordinating Board adopts new §§1.116 - 1.120 concerning Employee Scholarships without changes to the proposed text as published in the June 3, 2005, issue of the *Texas Register* (30 TexReg 3189). Specifically, these new sections encourage the professional development of employees through education and training under the State Employees Training Act, Government Code, Chapter 656, Subchapter C. This subchapter governs the eligibility of employees for participation in the program and the operation of the program. These programs are designed to increase the job potential of employees, provide financial assistance for the pursuit of higher education, and introduce new technology and educational methods into the workplace.

No comments were received regarding the new sections.

The new sections are adopted under the State Employees Training Act, Texas Government Code, §§656.041 - 656.105, which governs the eligibility of employees for participation in the program and the operation of the program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503160

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective date: August 21, 2005

Proposal publication date: June 3, 2005

For further information, please call: (512) 427-6114



## **CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS**

### **SUBCHAPTER E. APPROVAL OF DISTANCE EDUCATION AND OFF-CAMPUS INSTRUCTION FOR PUBLIC COLLEGES AND UNIVERSITIES**

#### **19 TAC §§4.101 - 4.108**

The Texas Higher Education Coordinating Board adopts the repeal of §§4.101 - 4.108 concerning the applicability of Board rules to extension and out-of-state courses and programs, without changes to the proposed text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2635). Specifically, these rules are being repealed in order that new sections being adopted simultaneously may address issues of organization and clarity.

No comments were received regarding the repeal of these sections.

The repeals are adopted under the Texas Education Code, §61.027, which gives the Coordinating Board general rule-making authority; §61.002, which establishes the Coordinating Board as an agency charged to provide leadership and coordination for the Texas higher education system; §61.051, which provides the Coordinating Board with authority to coordinate institutions of public higher education in promoting quality education and approve off-campus courses for credit offered by public institutions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503158

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective date: August 21, 2005

Proposal publication date: May 6, 2005

For further information, please call: (512) 427-6114



## SUBCHAPTER E. APPROVAL OF DISTANCE EDUCATION, OFF-CAMPUS, AND EXTENSION COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

### 19 TAC §§4.101 - 4.108

The Texas Higher Education Coordinating Board adopts new §§4.101 - 4.108 concerning the applicability of Board rules to extension and out-of-state courses and programs, with changes to the proposed text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2636). Specifically, these new sections specify that extension (non-formula-funded) courses are subject to Board rules, as are courses and programs offered by Texas public institutions outside the state and country. Correspondence courses are brought under these rules and may now be funded through state formula or extension charges. The adopted rules will ensure that all these courses and programs meet quality standards and that these offerings do not negatively affect on-campus courses and programs. The new sections also remove from the definition of distance education the restriction that the courses be taken by students away from a senior institution's main campus or outside the taxing district of a community college.

The following comments were received regarding the new sections:

Comment: Texas A&M University commented that it was unclear whether Study-Abroad and Study-in-America courses were types of off-campus course.

Response: The Board agrees and has clarified language in §4.103(34) and (35) to indicate that they are considered off-campus courses.

Comment: Texas A&M University commented that the definition of "course" seemed redundant with "academic credit course."

Response: The Board agrees that the definition of "course" in §4.103(7) be deleted.

Comment: Texas A&M University commented that the change in definition of "out-of-country" course might cause confusion and asked that a reference or pointer to "Study-Abroad" which replaced that term be included in the definition.

Response: The Board disagrees and has determined that greater confusion could be caused by including former terms in new definitions and declined to include a pointer in §4.103(26). No changes were made as a result of this comment.

Comment: Texas A&M University requested the definition of first-professional degrees include an enumeration of disciplines.

Response: The Board agrees and has added examples to the definition in §4.103(14)(C) but not a complete enumeration which would require updating if new first-professional degrees were created.

Comment: Texas A&M University commented that the term "peer institution" as used in the proposed rules does not match conventional usage of that term.

Response: The Board agrees and has deleted the definition for "peer institution" in §4.103(27), added a definition for "area institutions" in §4.103(2), and substituted the term "area institutions" for "peer institutions" in §4.107(b)(3).

Comment: Texas A&M University requested clarification of whether "workforce continuing education courses" mentioned in the rules could be offered by universities.

Response: The Board agrees and has modified the definition in §4.103(36) to restrict the term as used in these rules to "workforce continuing education courses" offered by community and technical colleges.

Comment: Texas A&M University noted that reporting of data on extension offering and students could be required under these rules and asked about reporting guidelines.

Response: The Board agrees that rules do permit the Coordinating Board to request reporting on extension programs. Any new reporting requirements developed would be discussed with institutions before their implementation. No changes were made as a result of this comment.

Comment: Texas A&M University asked whether out-of-country students who are not regularly enrolled students and who are taking Study-Abroad courses would be considered extension students.

Response: Extension students and their enrollments could not be submitted for formula funding. No changes were made as a result of this comment.

Comment: Texas A&M University asked whether these rules would apply to academic credit courses taught jointly by Texas A&M University and a Texas A&M agency, but not to continuing education courses taught solely by Texas A&M agencies.

Response: These rules would apply to jointly taught courses but not to continuing education offerings of the Texas A&M agencies. No changes were made as a result of this comment.

Comment: Texas A&M University asked whether the "peer institution" notification requirement mentioned in §4.107(c)(1) applied to Study-Abroad and Study-in-America courses.

Response: The Board has determined that the sentence requiring "peer institution" notification was not needed because the prior sentence provides that specific notification requirements be spelled out in provisions to be developed by the Commissioner. Section 4.107(c)(1) was changed to delete this sentence.

Comment: Texas A&M University commented that study aboard students might not have access to traditional library recourses as mentioned in §4.107(c)(7)(H).

Response: The Board agrees that the list of academic support services are examples of types of services and §4.107(c)(7)(H) was changed.

The new sections are adopted under the Texas Education Code, §61.027, which gives the Coordinating Board general rule-making authority; §61.002, which establishes the Coordinating Board as an agency charged to provide leadership and coordination for the Texas higher education system; §61.051, which provides the Coordinating Board with authority to coordinate institutions of public higher education in promoting quality education and approve off-campus courses for credit offered by public institutions.

#### *§4.101. Purpose.*

This subchapter provides guidance to all public institutions of higher education in Texas regarding the delivery of distance education, off-campus, and on-campus extension courses and programs. The Board's goals are to ensure the quality of these courses and programs and to provide Texas residents with access to distance education, off-campus, and extension courses and programs that meet their needs. The rules

are designed to assure the adequacy of the technical and managerial infrastructures necessary to support these courses and programs.

*§4.102. Authority.*

Authority for these provisions is provided by Texas Education Code, §61.051(j), which provides the Board with the authority to approve courses for credit, distance education, and extension programs.

*§4.103. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Academic credit course**--A college-level course that, if successfully completed, can be applied toward the number of courses required for achieving a degree, diploma, certificate, or other formal award.

(2) **Area institution**--A university, health-related institution, independent institution, or higher education center which is within a 50-mile radius of a proposed off-campus instruction site.

(3) **Board**--The Texas Higher Education Coordinating Board.

(4) **Commissioner of Higher Education or Commissioner**--The chief executive officer of the Texas Higher Education Coordinating Board.

(5) **Community College**--Any public community college as defined in Texas Education Code, §§61.003 and 130.005, and whose role, mission, and purpose is outlined in Texas Education Code, §§130.0011 and 130.003.

(6) **Continuing Education Unit or CEU**--Ten contact hours of participation in an organized educational experience under responsible sponsorship, capable direction, and qualified instruction and not offered for academic credit.

(7) **Correspondence course**--An academic credit course delivered through distance education that is either paper-based or electronic and that is largely self-paced.

(8) **Degree**--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", and "doctor's" and their equivalents and foreign cognates, which signifies satisfactory completion of the requirements of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(9) **Distance education course**--Course in which the majority of the instruction occurs when the students and instructor are not in the same physical setting. A course is considered to be offered by distance education if students receive more than one-half of the instruction at a different location than the instructor. A distance education course can be delivered synchronously or asynchronously to any single or multiple location(s) through electronic, correspondence, or other means. The course may be formula-funded or offered through extension, and it may be delivered to on-campus students and those who do not take courses on the main campus.

(10) **Distance education degree or certificate program**--A program in which a student may complete more than one-half of the semester credit hours required for the program through any combination of electronic and off-campus delivery methods.

(11) **Electronic delivery**--A mode of delivery for distance education courses and programs using electronic telecommunication technology systems.

(12) **Extension courses and programs**--Academic credit courses and programs delivered face-to-face or by distance education, including correspondence, whose semester credit hours are not submitted for formula funding. Face-to-face, academic credit extension courses and programs may be delivered on-campus or off-campus. This term does not apply to courses and programs delivered by community colleges to an extension center or extension facility unless the semester credit hours in the courses are not formula funded.

(13) **Extension Center or Extension Facility**--Any single or multiple locations other than the main campus of a community college district and outside the boundaries of the taxing authority of a community college district.

(14) **First-Professional Degree**--An award that requires completion of a program that meets all of the following criteria:

(A) completion of the academic requirements to begin practice in the profession;

(B) at least 2 years of college work prior to entering the program; and

(C) a total of at least 6 academic years of college work to complete the degree program, including prior required college work plus the length of the professional program itself. First-Professional degrees are discipline-specific, including, but not limited to, degrees such as: Dentistry (D.D.S. or D.M.D.); Medicine (M.D.); Veterinary Medicine (D.V.M.); Law (L.L.B., J.D.); and Pharmacy (PharmD).

(15) **Formula funding**--The method used to allocate appropriated sources of funds among institutions of higher education.

(16) **Formula-funded course**--An academic credit course delivered face-to-face or by distance education, including correspondence, whose semester credit hours are submitted for formula funding.

(17) **Governing board**--The body charged with policy direction of any public community college district; the technical college system; public state college; public senior college, university, or health-related institution; career school or college; or other educational agency including but not limited to boards of directors, boards of regents, boards of trustees, and independent school district boards.

(18) **Institution of higher education or Institution**--Any public technical institute, public community college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

(19) **Higher education center**--A Multi-Institutional Teaching Center, University System Center, or single institution center established by the Legislature or approved by the Board for the specific purpose of offering upper-division and graduate academic credit courses and programs from the parent institution(s). Higher education centers are of a larger size and offer a broader array of courses and programs than higher education teaching sites. They have minimal administration and (usually) locally provided facilities.

(20) **Higher education teaching site**--An off-campus, upper-division and graduate teaching location that promotes access in an area not served by other public universities. Teaching sites offer a very limited array of courses and/or programs and do not entail a permanent commitment for continued service. Institutions do not own the facilities for teaching sites nor do they receive state support to acquire or build facilities for them. Board approval or recognition is not required.

(21) **Private or independent institution of higher education or Independent Institution**--A private or independent college or university as defined in the Texas Education Code, §61.003(15).

(22) Institutional Report--A report describing distance education and off-campus instruction delivered for academic credit.

(23) Main campus--The headquarters of an institution and the location where the principal or chief executive's offices are located, also referred to as on-campus.

(24) Off-campus course--Course in which one-half or more of the instruction is delivered with the instructor and student in the same physical location and which meets one of the following criteria: for public senior colleges and universities, Lamar state colleges, or public technical colleges, off-campus locations are locations away from the main campus; for public community colleges, off-campus locations are sites outside the taxing district. The course may receive formula-funding or be given by extension.

(25) Off-campus degree or certificate program--A program for which a student may complete more than one-half of the required credit hours by taking off-campus courses.

(26) Out-of-state/out-of-country courses and programs--Academic credit courses and programs delivered outside Texas to individuals or groups who are not regularly enrolled, on-campus students. Out-of-state and out-of-country courses do not receive formula funding and are a type of academic credit extension offering. They may be offered through distance education or face-to-face instruction.

(27) Program or Program of study--Any grouping of courses which are represented as entitling a student to a degree or certificate.

(28) Public health-related institution or Health-related institution--a medical or dental unit as defined by the Texas Education Code, §61.003(5).

(29) Public university or University--a general academic teaching institution as defined by the Texas Education Code, §61.003(3).

(30) Regional Council--A cooperative arrangement among representatives of all public, private or independent institutions of higher education within a Uniform State Service Region, as established under Texas Education Code, §51.662.

(31) Regular on-campus student--A student who is admitted to an institution, the majority of whose semester credit hours are reported for formula funding, and whose coursework is primarily taken at an institution's main campus.

(32) Semester credit hour--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

(33) Service area--The territory served by a community college district as defined in Texas Education Code, §130.161.

(34) Study-in-America courses--Off-campus, academic credit instruction which is delivered outside Texas but in the United States primarily to regular on-campus students.

(35) Study-Aboard courses--Off-campus, academic credit instruction which is delivered outside the United States primarily to regular on-campus students.

(36) Workforce continuing education course--A course of ten contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and

qualified instruction, as outlined in the Guidelines for Instructional Programs in Workforce Education with an occupationally specific objective and supported by state appropriations. Workforce continuing education courses are offered by community and technical colleges and differs from a community service course which is not eligible for state reimbursement and is offered for recreational or avocational purposes.

#### *§4.104. General Provisions.*

(a) This subchapter governs the following types of instruction offered by institutions of higher education:

(1) Academic credit courses, degree and certificate programs, and formula-funded workforce continuing education provided by a community college through distance education or outside of the boundaries of its taxing district through off-campus instruction;

(2) Academic credit courses, and degree and certificate programs provided by a senior college or university or health-related institution through distance education; off-campus instruction; or on-campus, off-campus or electronic extension;

(3) Academic credit courses, degree and certificate programs, and formula-funded workforce continuing education provided by a public technical college or Lamar state college through distance education or off-campus instruction;

(4) Academic credit courses and programs offered outside Texas by institutions of higher education, including Study-Aboard, Study-in-America, out-of-state, and out-of-country courses;

(5) Extension courses and programs that are offered through distance education or off-campus instruction are covered under this subchapter's provisions concerning distance education or off-campus instruction, even though they may not be submitted for formula funding.

(b) This subchapter does not apply to the following types of instruction:

(1) Non-credit adult and continuing education courses provided through distance education, off-campus delivery, or given by on-campus extension by a senior college or university or health-related institution;

(2) Continuing education, except formula-funded workforce continuing education, provided by community colleges, Lamar state colleges, and public technical colleges.

#### *§4.105. Functions of Regional Councils.*

(a) Universities, health-related institutions, public technical colleges, and Lamar state colleges shall submit for Regional Council review all off-campus lower-division courses proposed for delivery to sites in the Council's Service Region.

(b) Public community colleges shall submit for the appropriate Regional Council's review all off-campus lower-division courses proposed for delivery to sites outside their service areas.

(c) In the event of a dispute arising from electronic delivery of lower-division courses, any institution party to the disagreement may appeal first to the Regional Council, and then to the Commissioner and the Board.

(d) Regional Councils in each of the ten Uniform State Service Regions shall make recommendations to the Commissioner and shall resolve disputes regarding plans for lower-division courses and programs proposed by public institutions.

(e) Each Regional Council shall make recommendations to the Commissioner regarding off-campus courses and programs proposed for delivery within its Uniform State Service Region in accordance with

the consensus views of Council members, except for courses and programs proposed to be offered by public community colleges in their designated service areas.

(f) Regional Councils shall advise the Commissioner on appropriate policies and procedures for effective state-level administration of off-campus lower-division instruction.

*§4.106. Institutional Report for Distance Education, Off-Campus Instruction, and On-Campus Extension Programs.*

(a) Prior to offering any distance education, off-campus, or on-campus extension courses or programs for the first time, institutions of higher education shall submit an Institutional Report for Distance Education, and Off-Campus and On-Campus Extension Instruction to the Board for approval. The Commissioner shall provide guidelines for development of the report and a schedule for periodic submission of updated reports.

(b) Institutional academic and administrative policies shall reflect a commitment to maintain the quality of distance education, off-campus, and on-campus extension courses and programs in accordance with the provisions of this subchapter. An Institutional Report shall conform to Board guidelines and criteria of the Commission on Colleges of the Southern Association of Colleges and Schools in effect at the time of the Report's approval. These criteria shall include provisions relating to:

- (1) Institutional Issues;
- (2) Educational Programs;
- (3) Faculty;
- (4) Student Support Services; and
- (5) Distance Education Facilities and Support.

*§4.107. Standards and Criteria for Distance Education, Off-Campus Instruction, and On-Campus Extension Courses and Programs.*

(a) The following provisions apply to all programs and courses covered under this subchapter, unless otherwise specified:

(1) Each course and program offered under the provisions of this subchapter shall be within the role and mission of the institution responsible for offering the instruction. Each course shall be on the offering institution's inventory of approved courses, and each program shall be on the offering institution's inventory of approved programs.

(2) Prior approval may be required before an institution may offer courses and programs under the provisions of this subchapter in certain subject area disciplines or under other conditions specified by the Board or Commissioner.

(3) The Commissioner shall establish procedures governing the quality, review and approval of distance education, off-campus, and on-campus extension courses and programs.

(4) The Commissioner may require institutions to provide special reports on distance education, off-campus, out-of-state/country, and on-campus extension courses and programs.

(b) The following provisions apply to all programs covered under this subchapter, unless otherwise specified:

(1) An institution shall not offer doctoral or first-professional degree programs by distance education, off-campus, and/or on-campus extension instruction without specific prior approval by the Board. The Commissioner may approve for delivery to other off-campus sites or by other delivery modes doctoral and special professional degree programs that have previously been approved by the Board for electronic or off-campus delivery.

(2) An institution offering a degree or certificate program under the provisions of this subchapter shall comply with relevant procedures and rules of the appropriate regulatory or accrediting agency or professional certification board.

(3) Each degree program offered by distance education, off-campus instruction, or on-campus extension shall be approved by an institution's governing board. A certification concerning each of these degree programs shall be submitted to the Board. The certification shall be provided in accordance with provisions and schedules determined by the Commissioner. For baccalaureate and graduate off-campus programs and for on-campus extension programs, the parent institution shall notify all potentially affected area institutions as determined by the Commissioner.

(4) Institutions shall require that students (except for students in out-of-country programs) enrolled in a distance education, off-campus, or on-campus extension degree program satisfy the same requirements for admission to the institution and the program as required of regular on-campus students. Students in degree programs to be offered collaboratively shall meet the admission standards of their home institution. Out-of-country students shall meet equivalent standards for admission into programs.

(c) The following provisions apply to all courses covered under this subchapter, unless otherwise specified:

(1) Except for out-of-state/country courses, institutions shall provide notification of each course offered by distance education, off-campus, or on-campus extension instruction under the provisions of this subchapter in accordance with provisions and schedules determined by the Commissioner.

(2) Institutions shall report distance education and off-campus courses submitted for formula funding in accordance with the Board's uniform reporting system and the reporting provisions of this subchapter.

(3) Institutions may submit for formula funding the following types of academic credit courses: distance education courses delivered to Texas and non-Texas residents located on-campus or at another location in Texas, distance education courses delivered to Texas residents located out of state or out of country; Study-Abroad courses, and Study-in-America courses.

(4) Institutions shall not submit the following types of courses for formula funding:

(A) distance education courses taken by non-resident students who are located out of state or out of country,

(B) courses in out-of-state or out-of-country programs, as defined above, taken by any student, or

(C) extension courses.

(5) For courses not eligible to be submitted for formula funding, institutions shall charge fees that are equal to or greater than Texas resident tuition and applicable fees, and that are sufficient to cover the total cost of instruction and overhead, including administrative costs, benefits, computers and equipment, and other related costs.

(6) Study-in-America and Study-Abroad courses offered by institutions of higher education, or by an approved consortium composed of Texas public institutions, shall be approved by the Commissioner in order for the semester credit hours or contact hours generated in those courses to receive formula funding. The Commissioner shall develop procedures and standards for Study-in-America and Study-Abroad offerings.



(7) All courses covered under this subchapter shall meet the quality standards applicable to on-campus courses. They shall also adhere to the following guidelines and standards:

(A) Courses which offer either academic credit or Continuing Education Units shall do so in accordance with the standards of the Commission on Colleges of the Southern Association of Colleges and Schools.

(B) Except for students in out-of-country courses, students shall satisfy the same requirements for enrollment in an academic credit course as required of on-campus students. Out-of-country students shall be assessed for academic guidance purposes.

(C) Faculty shall be selected and evaluated by equivalent standards, review, and approval procedures used by the institution to select and evaluate faculty responsible for on-campus courses.

(D) Institutions shall provide training and support to enhance the added skills required of faculty teaching courses through electronic means.

(E) The instructor of record shall bear responsibility for the delivery of instruction and for evaluation of student progress.

(F) Faculty for graduate-level courses shall be approved in the same manner as graduate faculty for on-campus courses.

(G) All courses shall be appropriately integrated with the entity or entities administering the corresponding on-campus courses. The supervision, monitoring, and evaluation processes for instructors shall be equivalent to those for on-campus courses.

(H) Students shall be provided academic support services appropriate for distance education and off-campus learners, such as academic advising, career counseling, library and other learning resources, and financial aid.

(I) Facilities (other than homes as distance education reception sites) shall be comparable in quality to those for on-campus courses.

(J) Institutions shall adhere to additional criteria outlined in the Guidelines for Institutional Reports for Distance Education and Off-Campus Instruction.

**§4.108. Non-Formula-Funded (Extension) Course and Program General Provisions.**

(a) Institutions shall not submit non-state-funded lower-division credit courses to Regional Councils.

(b) Institutions shall not submit distance education courses delivered outside the state to non-Texas residents for formula funding.

(c) The Commissioner shall develop standards for institutions offering out-of-state/country courses and programs.

(d) Institutions shall not jeopardize or diminish the status of formula-funded on-campus courses and programs in order to offer extension courses. Extension courses shall not be a substitute for offering a sufficient number of formula-funded on-campus courses.

(e) Institutions shall report fees received for extension and out-of-state/country courses in accordance with general institutional accounting practices.

(f) Institutions shall report enrollments, courses and graduates associated with extension offerings as required by the Commissioner.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503157

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective date: August 21, 2005

Proposal publication date: May 6, 2005

For further information, please call: (512) 427-6114



## SUBCHAPTER G. EARLY COLLEGE HIGH SCHOOLS AND MIDDLE COLLEGES

### 19 TAC §§4.151 - 4.161

The Texas Higher Education Coordinating Board adopts new §§4.151 - 4.161 concerning Early College High Schools with changes to the proposed text as published in the June 3, 2005 issue of the *Texas Register* (30 TexReg 3190). Specifically, these new sections will provide appropriate oversight by the Board of Early College High Schools (ECHS) by requiring notification of intent to develop an ECHS entity; assessment of students; appropriate faculty selection, supervision, and evaluation; oversight of curricula; transcribing of credit; program evaluation; funding; and removal of dual credit restrictions.

The following comments were received regarding the new sections:

Comment: Tarleton State University asked if there is an existing agreement with a high school, does that agreement now need to include freshman and sophomore students?

Response: No, these rules apply only to Early and Middle Colleges, not to ordinary dual credit students or agreements. No changes were made as a result of this comment.

Comment: Tarleton State University asked if they can continue the current program without creating an Early College?

Response: Yes. No changes were made as a result of this comment.

Comment: Tarleton State University asked if they needed permission from Ranger College to do dual credit in Stephenville High School since this is in the service area of Ranger College. Do they need continued permission from Ranger College?

Response: Check with Higher Education Regional Council (HERC) for that area. Even if continued permission isn't required, it is a good idea to notify HERC annually of intent to continue the dual credit arrangement. No changes were made as a result of this comment.

Comment: Tarleton State University asked if they create an Early College then can they work with any high school regardless of the service area issue?

Response: No, creating an Early College does not remove your obligation to work in cooperation with your HERC. No changes were made as a result of this comment.

Comment: Tarleton State University asked how do they deal with home-schooled or private school students who might request dual credit?

Response: As much as is practical and feasible, institutions should treat home-schooled and private school students the same as they would public school students. This means hold

them to the same standards, apply the same policies, etc. No changes were made as a result of this comment.

Comment: The University of Texas at Tyler commented that, in general, they do not endorse dual credit courses, except for students with exceptional ability. Certainly, the current two-dual-credit-course limit is already overly generous. It should not be removed. Students should be taking much stronger, in-depth high school courses, rather than going to junior college their senior year. If it is possible for more than a handful of high school students to take college English and math their senior year, then that is an indictment of the of the dual credit process.

Response: These rules do not apply to the ordinary dual credit high school student, but rather only to a new and relatively small group of Texas students: those enrolled in special academies called Early College High Schools or Middle Colleges. Therefore, the concern that the current two-course limit for dual credit students is being removed is misplaced. That limit will remain for regular high school students in Texas taking dual credit courses. These new rules will allow Early College High Schools and Middle Colleges the flexibility to provide innovative and unique curricula to their students through a pilot program. No changes were made as a result of this comment.

Comment: One commenter asked that Preliminary SAT be removed as one of the instruments that an Early/Middle College could use to satisfy Texas Success Initiative requirements. The reason is because the PSAT has not been Board-approved for that use, and the Board does not have cut-off scores to determine college-readiness for the PSAT.

Response: The Board changed §4.155 by removing reference to Preliminary SAT scores.

Comment: The Texas Education Agency (TEA) commented that there is no statement in the proposed rules that the current rules on dual credit do not apply to these students [in Early College High Schools/Middle Colleges]. The TEA suggested that some language of that nature may need to be inserted, so there is no confusion about which rules apply.

Response: The Board changed §4.161 to make it clear that students in these new educational institutions are not bound by the dual credit rules for regular high school students.

Comment: Northeast Texas Community College asked to postpone consideration of the rule change proposal to allow for sufficient time for review by faculty. The current rules, once adopted, will significantly impact the decision community colleges make on implementing Early College High School/Middle Colleges on their campuses. In order for these initiatives to be successful they must have the "buy-in" of the college faculty. The 30-day comment period of June 3 - July 3, by the nature of higher education schedules, omits a significant portion of faculty comments. We believe that it is absolutely critical to allow faculty to comment on issues directly impacting instructional delivery, and quite possibly imposing significant curriculum changes.

Response: While the Coordinating Board values the input of faculty and administrators, delaying the consideration and implementation of these rules would create difficulties for the institutions already involved in the pilot project for Early College High Schools/Middle Colleges (ECHS/MC). The proposed rules need to be in place to provide operational guidelines for those ECHS/MC entities that will already be enrolling and educating students in the Fall 2005 term. Any feedback provided to Coordinating Board staff before or after consideration of the ECHS/MC

rules will be taken into account for future revisions of those rules. No changes were made as a result of this comment.

Comment: The University of Houston System commented that they believe it is important that the review of the proposed partnership be examined in light of the current dual credit program to ascertain that the same standards are required of ECHS programs as dual credit. The proposed rules allow ECHS/MC students to obtain up to 2 years college credit, and to earn dual credit as freshmen and sophomores: consider the advisability of this arrangement. It is not clear if ECHS/MC entities must comply with current dual credit rules. It appears that that the ECHS/MC is meant to be separate and different from the traditional dual credit arrangement. It would be helpful if the Rules for the ECHS/MC could be written with the same level of specificity as the dual credit rules and accompanied by a statement early in the rules that distinguishes the ECHS/MC programs from the dual credit programs. Greater clarity would facilitate development of the new proposed program design should it be approved for implementation.

Response: The proposed rules would allow ECHS/MC students to obtain up to 2 years of college credit in order to comply with the enabling legislation, which required the ECHS/MC to "allow a participating student to complete high school and receive at least a high school diploma and associate degree at the time of graduation." Working in consultation with legislative staff and the Texas Education Agency, Coordinating Board staff also decided to allow qualifying ECHS/MC students to begin dual credit during their freshmen and sophomore years, because completing high school requirements and obtaining an associate degree by the time of graduation would be much more feasible if students could begin the college-level work earlier in their high school programs. ECHS/MC schools are not bound by the current dual credit rules, and are separate and different from the traditional dual credit arrangements. Finally, Coordinating Board staff formulated the ECHS/MC rules in order to allow for flexibility and innovation. Greater specificity in these rules will be possible in the future, once reporting data from the ECHS/MC schools is received and analyzed, and the statewide ramifications of the ECHS/MC pilot program have been considered. No changes were made as a result of these comments.

The new sections are adopted under the Texas Education Code, §§61.027, 61.076, 130.001(b)(3)-(4), 130.008, and 130.090 which provides the Coordinating Board with authority to regulate courses and programs offered by public institutions of higher education in cooperation with secondary schools.

#### *§4.151. Purpose.*

The purpose of this subchapter is to provide appropriate oversight by the Board for public colleges or universities to engage in early college high schools or middle colleges.

#### *§4.152. Authority.*

Texas Education Code, §§61.076, 130.001(b)(3) - (4), 130.008, and 130.090 provide the Board with the authority to regulate courses and programs offered by public institutions of higher education in cooperation with secondary schools.

#### *§4.153. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Assessment**--The criterion-referenced assessment instruments adopted by the Board to assess a student's readiness to enroll in college-level coursework or curricula.

(2) Board--The Texas Higher Education Coordinating Board.

(3) Colleges or Universities, or C/U--Texas public two-year colleges or public universities.

(4) Commissioner--The Commissioner of Higher Education.

(5) Early College High School or Middle College, or ECHS/MC--The institution or entity that provides the outreach, curricula, and student learning and support programs for students who attain the Recommended or Advanced High School Program diploma and up to two years of college credit simultaneously.

(6) Recommended or Advanced High School Program--The curriculum specified in the Texas Education Code, §28.025, and the rules promulgated there under by the State Board of Education.

**§4.154. Notification of Institutional Intent to Develop an Early College High School/Middle College Entity.**

Texas public colleges and universities (C/U) are eligible to enter into agreements with Texas public schools to create an ECHS/MC. Any C/U that participates in the creation of an ECHS/MC shall notify the Board in accordance with provisions and schedules determined by the Commissioner.

**§4.155. Student Eligibility.**

(a) An ECHS/MC shall assess each student for readiness to engage in any college-level curriculum offered for college credit prior to the student's enrollment in such curriculum.

(b) For this assessment, an ECHS/MC may use any instrument otherwise approved by the Board for Texas Success Initiative purposes in accordance with § 4.54 (relating to Exemptions/Exceptions) and § 4.56 (relating to Assessment Instrument) of this title including, but not limited to, Texas Assessment of Knowledge and Skills (TAKS) scores, ACT scores, and SAT scores.

(c) After assessment, the ECHS/MC, using guidelines established by the C/U, shall determine what forms of assistance and remediation, if any, are necessary prior to a student's enrollment in any college-level curriculum based on the results of the assessment and other indicators of student readiness.

**§4.156. Faculty Selection, Supervision, and Evaluation.**

(a) The C/U shall select instructors of all college-level curricula offered for college credit in an ECHS/MC. These instructors must be regularly employed faculty members of the C/U or meet the same standards, including but not limited to, minimal requirements of the Commission on Colleges of the Southern Association of Colleges and Schools.

(b) The C/U shall supervise and evaluate instructors of college-level curricula offered for college credit using the same or comparable procedures used for faculty at the C/U.

**§4.157. Course Curriculum, Instruction, and Grading.**

The C/U shall ensure that curricula offered for college credit and comparable courses offered by the C/U are equivalent with respect to the curriculum, materials, instructional activity, and method/rigor of evaluation of student performance.

**§4.158. Transcribing of Credit.**

The C/U shall determine when the college credit for each ECHS/MC student should appear on the C/U transcript.

**§4.159. Evaluation and Accountability.**

Each ECHS/MC and sponsoring C/U shall be responsible for the development and implementation of an evaluation process to determine the effectiveness of the ECHS/MC. Measures of effectiveness shall include, but are not limited to, student results on the K-12 accountability assessments (e.g., TAKS) and success indicators of graduates at Texas public institutions of higher education (e.g., participation rates, grade point average, retention rates, and graduation rates).

**§4.160. Funding.**

(a) State funding for high school and college credit will be available to the public school district and the C/U based on the current funding rules of the State Board of Education and the Board.

(b) The C/U may claim funding for all ECHS/MC students receiving college credit.

**§4.161. Exemption from Certain Dual Credit Restrictions.**

A student enrolled in ECHS/MC may enroll in more than two dual credit courses per semester, and may enroll in dual credit coursework with freshman, sophomore, junior, or senior high school standing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503159

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective date: August 21, 2005

Proposal publication date: June 3, 2005

For further information, please call: (512) 427-6114



## CHAPTER 17. CAMPUS PLANNING

### SUBCHAPTER K. REPORTS

#### 19 TAC §17.101

The Texas Higher Education Coordinating Board adopts an amendment to §17.101 concerning Campus Planning with changes to the proposed text as published in the June 3, 2005 edition of the *Texas Register* (30 TexReg 3191). Specifically, this amendment would change the required date concerning certification of the facilities inventory from December 15 of each year to November 1 of each year. This revision to the rules is necessary to accommodate the accountability system reports that will be presented to the Board at its January 2006 meeting.

No comments were received regarding the amendment.

The amendment is adopted under the Texas Education Code, Section 61.027, which provides the Board with the authority to adopt rules, and Texas Education Code, Section 61.0572.

**§17.101 Institutional Reports**

Institutions of higher education shall submit current data to the Board for the following reports:

(1) Facilities Inventory.

(A) Periodic Review. Institutions shall report a record of all property, buildings, and rooms occupied or in the control of an institution in a format specified by the Board.

(i) The inventory of facilities shall be updated on an ongoing basis.

(ii) The inventory is subject to periodic audits.

(iii) The inventory shall be certified by the institution annually on or before November 1, or as specified by the Board.

(B) Use. The Board shall use the data reported in the facilities inventory to evaluate project applications, perform facilities audits, to determine compliance with Board Standards, and other required or requested analyses. The facilities inventory shall be used to complete the following reports as required by this section:

(i) the Space Projection Model;

(ii) calculation of replacement values; and

(iii) calculation of classroom and class lab utilization.

(2) Facilities Development Reports. The Board shall consider projects that are included in the facilities development plans (MP1 and MP2). A project that is not included in the plan may be considered if the Board determines that the institution, even with careful planning, could not reasonably have foreseen the project need.

(A) Facilities Development Plan (MP1). On or before July 1 of every year, beginning in 2004, an institution shall submit an update to its Facilities Development Plan (MP1) on file with the Board, as required by Texas Education Code, Section 61.0582. In every even-numbered year, the Board shall provide Facilities Development Plan data to the Bond Review Board for inclusion in the Capital Expenditure Report. This report may include capital renewal and deferred maintenance projects. The report shall include:

(i) any proposed new construction greater than \$250,000, repair and rehabilitation greater than \$1,000,000, information resource project greater than \$1,000,000, and property purchases for any amount that may be submitted within the next five years to the Board, regardless of funding source;

(ii) the funding source for any planned project identified in paragraph 2(A)(i) of this section; and

(iii) a description of the proposals the institution plans to finance with the Higher Education Assistance Fund or Permanent University Fund.

(B) Campus Deferred Maintenance Plan (MP2). On or before October 15 of every year, an institution shall submit an update to its Campus Deferred Maintenance Plan (MP2) on file with the Board. This report does not include capital renewal projects. The report shall include:

(i) a list of an institution's facilities backlogged or deferred maintenance needs for the next five years that cost \$10,000 or greater;

(ii) the amount the institution plans to designate each fiscal year for the next five years to address the backlogged or deferred maintenance reported in the Campus Deferred Maintenance Plan;

(iii) the amount of an institution's facilities critical backlogged or deferred maintenance needs for the next five years that cost \$10,000 or greater;

(iv) a plan to address deferred maintenance if a project is delayed three years beyond its originally scheduled completion date; and

(v) an explanation for the delay in a project and a plan to address deferred maintenance if a project has remained on the institution's MP2 report for a third year.

(C) Campus Addressed Deferred Maintenance Report (MP4). On or before October 15 of every year, an institution shall submit an update to its Campus Addressed Deferred Maintenance Report (MP4) on file with the Board. The report shall include the amount of backlogged or deferred maintenance addressed in previous fiscal year.

### (3) Project Status and Tracking Reports.

(A) Annually, from the date of approval, institutions shall report the status of an approved project to the Board. Reporting to the Board on an annual basis shall cease after the construction project is placed into service and included in the Facilities Inventory Report, or the property acquisition is completed, or the renovation shall be reported to be complete. The report shall include, but is not limited to:

(i) approved and actual project cost;

(ii) approved and actual building cost;

(iii) approved and actual GSF;

(iv) approved and actual NASF;

(v) approved and actual E&G NASF;

(vi) approved and actual source(s) of funding; and

(B) If the actual costs, square footage, or source(s) of funding changed beyond the thresholds defined in Section 17.14 of this title (relating to Re-approval of Projects), the institution shall submit a project application requesting re-approval of the project and include a justification for the delay in the request.

(4) Governing Board Approved Projects. Institutions shall report to the Board annually, on a form specified by the Board, all projects approved by the institution's governing board but not requiring Board approval that add E&G space to the institution's facilities inventory. The report shall be submitted electronically not later than December 1 of each year.

(5) Other Reports. Institutions are required to submit such other reports required by the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503156

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective date: August 21, 2005

Proposal publication date: June 3, 2005

For further information, please call: (512) 427-6114



## CHAPTER 21. STUDENT SERVICES

### SUBCHAPTER J. THE PHYSICIAN

### EDUCATION LOAN REPAYMENT PROGRAM

#### 19 TAC §21.255

The Texas Higher Education Coordinating Board adopts amendments to §21.255 concerning the Physician Education Loan Repayment Program without changes to the proposed text as published in the June 3, 2005, issue of the *Texas Register* (30 TexReg 3191). Specifically, the amendments align the rules of the program with the statutory language and update

the names of three state agencies. Currently, the rules for the Physician Education Loan Repayment Program state that not more than 20 percent of the amount appropriated for the Program each fiscal year will be used to fund repayments to first-time applicants who work for certain state agencies. The amendments provide that not more than 20 percent of the physicians receiving repayment assistance under the Program in each fiscal year may be employed by the Texas Department of State Health Services, the Texas Department of Criminal Justice, or the Texas Youth Commission.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §§61.531 - 61.539, which provides the Coordinating Board with the authority to establish procedures to administer this program and Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules to effectuate the provisions of Texas Education Code, Chapter 61.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503150  
Jan Greenberg  
General Counsel  
Texas Higher Education Coordinating Board  
Effective date: August 21, 2005  
Proposal publication date: June 3, 2005  
For further information, please call: (512) 427-6114

◆ ◆ ◆  
**SUBCHAPTER W. EDUCATIONAL LOAN  
REPAYMENT PROGRAM FOR ATTORNEYS  
EMPLOYED BY THE OFFICE OF THE  
ATTORNEY GENERAL**

**19 TAC §§21.710 - 21.717**

The Texas Higher Education Coordinating Board adopts the repeal of §§21.710 - 21.717 concerning the Education Loan Repayment Program for Attorneys Employed by the Office of the Attorney General, without changes to the proposed text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2640). The Office of General Counsel concluded that, due to numerous changes to the sections, it would be more efficient to repeal the whole subchapter and propose all new sections.

No comments were received regarding the repeal.

The repeal of these sections is adopted under the Texas Education Code, §61.9729, which authorizes the Coordinating Board to adopt rules necessary for the administration of §§61.9721 - 61.9732 of the Texas Education Code, concerning the Repayment of Certain Education Loans Owed by Certain State Attorneys.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503151  
Jan Greenberg  
General Counsel  
Texas Higher Education Coordinating Board  
Effective date: August 21, 2005  
Proposal publication date: May 6, 2005  
For further information, please call: (512) 427-6114

◆ ◆ ◆  
**19 TAC §§21.710 - 21.716**

The Texas Higher Education Coordinating Board adopts new §§21.710 - 21.716 concerning the Education Loan Repayment Program for Attorneys Employed by the Office of the Attorney General, without changes to the proposed text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2641). Specifically, the new sections provide for a more efficient application process and allow for appropriate expertise in selecting applicants to receive loan repayment.

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §61.9729, which authorizes the Coordinating Board to adopt rules necessary for the administration of §§61.9721 - 61.9732 of the Texas Education Code, concerning the Repayment of Certain Education Loans Owed by Certain State Attorneys.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503152  
Jan Greenberg  
General Counsel  
Texas Higher Education Coordinating Board  
Effective date: August 21, 2005  
Proposal publication date: May 6, 2005  
For further information, please call: (512) 427-6114

◆ ◆ ◆  
**CHAPTER 22. GRANT AND SCHOLARSHIP  
PROGRAMS**

**SUBCHAPTER I. PROVISIONS FOR THE  
FIFTH-YEAR ACCOUNTING STUDENT  
SCHOLARSHIP PROGRAM**

**19 TAC §§22.162, 22.166, 22.167**

The Texas Higher Education Coordinating Board adopts amendments to §§22.162, 22.166, and 22.167 concerning the Fifth-Year Accounting Student Scholarship Program, without changes to the proposed text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2643). Specifically, the amendments to §22.162 eliminate unnecessary definitions and add a definition of "Institution." The amendment to §22.166 reflects the inclusion of race/ethnicity in the allocation formulae. The amendments to §22.167 change the administration of the program from a centrally processed one to a campus-based program, streamline operations at the Coordinating Board, add consistency to the way programs are administered, and provide the Coordinating Board additional control over unexpended funds.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.753, which authorizes the Coordinating Board to establish and administer scholarships for fifth-year accounting students.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503153

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective date: August 21, 2005

Proposal publication date: May 6, 2005

For further information, please call: (512) 427-6114

◆ ◆ ◆

#### 19 TAC §§22.168 - 22.172

The Texas Higher Education Coordinating Board adopts the repeal of §§22.168 - 22.172 concerning the Fifth-Year Accounting Student Scholarship Program without changes to the proposed text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2644). Specifically, the repeal would allow institutions to administer the program as a campus-based program and would eliminate the need for §22.168, titled "Adjustments to Awards Made through Central Processing." Deleting §22.168 necessitates repealing §§22.168 - 22.172 in order that the remaining sections may be renumbered.

No comments were received regarding the amendments.

The repeal is adopted under the Texas Education Code, §61.753, which authorizes the Coordinating Board to establish and administer scholarships for fifth-year accounting students.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503155

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective date: August 21, 2005

Proposal publication date: May 6, 2005

For further information, please call: (512) 427-6114

◆ ◆ ◆

#### 19 TAC §§22.168 - 22.171

The Texas Higher Education Coordinating Board adopts new §§22.168 - 22.171 concerning the Fifth-Year Accounting Student Scholarship Program, without changes to the proposed text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2644). Specifically, the new sections reflect the necessary renumbering as a result of deleting the section titled "Adjustments to Awards Made through Central Processing."

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §61.753, which authorizes the Coordinating Board to establish and administer scholarships for fifth-year accounting students.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2005.

TRD-200503154

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective date: August 21, 2005

Proposal publication date: May 6, 2005

For further information, please call: (512) 427-6114

◆ ◆ ◆

# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Department of Licensing and Regulation

### Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16 Texas Administrative Code Chapter 61, Combative Sports. This review is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

As required by Texas Government Code, §2001.039, any questions or written comments pertaining to this rule review may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, P.O. Box 12157, Austin, Texas 78711, facsimile (512) 475-3032, or by e-mail [caroline.jackson@license.state.tx.us](mailto:caroline.jackson@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

- 16 TAC §61.1. Authority.
- 16 TAC §61.10. Definitions.
- 16 TAC §61.20. General Licensing Requirements for Ring Officials and Contestants.
- 16 TAC §61.21. General Prohibitions.
- 16 TAC §61.30. Responsibilities and Authority of the Department.
- 16 TAC §61.40. Responsibilities of the Promoter.
- 16 TAC §61.41. Responsibilities of the Referee.
- 16 TAC §61.42. Responsibilities of Judges.
- 16 TAC §61.43. Responsibilities of Seconds.
- 16 TAC §61.44. Responsibilities of Managers.
- 16 TAC §61.45. Responsibilities of Timekeepers.
- 16 TAC §61.46. Responsibilities of Ringside Physicians.

- 16 TAC §61.47. Responsibilities of Contestants.
  - 16 TAC §61.80. Fees.
  - 16 TAC §61.91. Sanctions and Penalties.
  - 16 TAC §61.105. Weight Categories and Weigh-in.
  - 16 TAC §61.107. Boxing.
  - 16 TAC §61.108. Kickboxing.
  - 16 TAC §61.109. Elimination Tournaments/Toughman Competitions.
  - 16 TAC §61.110. Martial Arts.
  - 16 TAC §61.111. Mixed Martial Arts including Shoot Wrestling/Fighting or Pancrase Wrestling/Fighting.
  - 16 TAC §61.112. Muay Thai Fighting.
  - 16 TAC §61.120. Medical Advisory Committee.
- TRD-200503097  
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Filed: July 28, 2005

◆ ◆ ◆  
The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16 Texas Administrative Code Chapter 67, Auctioneers. This review is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

As required by Texas Government Code, §2001.039, any questions or written comments pertaining to this rule review may be submitted to Tamala Fletcher, Legal Secretary, General Counsel's Office, P.O. Box 12157, Austin, Texas 78711, facsimile (512) 475-3032, or by e-mail, [tamala.fletcher@license.state.tx.us](mailto:tamala.fletcher@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

16 TAC §67.1. Authority.  
16 TAC §67.10. Definitions.  
16 TAC §67.20. License Requirements--Auctioneers.  
16 TAC §67.21. License Requirements--Associate Auctioneers.  
16 TAC §67.22. License Requirements--Examinations.  
16 TAC §67.25. Continuing Education.  
16 TAC §67.40. Education and Recovery Fund.  
16 TAC §67.41. Education and Recovery Fund--Definitions.  
16 TAC §67.42. Education and Recovery Fund--Claims.  
16 TAC §67.60. Responsibilities of the Department.  
16 TAC §67.65. Advisory Board.  
16 TAC §67.70. Requirements of the License Holder.  
16 TAC §67.80. Fees--Original License.  
16 TAC §67.81. Fees--Renewal.

16 TAC §67.82. Fees--Duplicate License.  
16 TAC §67.83. Fees--Examination.  
16 TAC §67.90. Sanctions--Administrative Sanctions/Penalties.  
16 TAC §67.94. Sanctions--Revocation, Suspension, or Denial Because of Criminal Conviction.  
16 TAC §67.100. Technical Requirements--General.  
16 TAC §67.101. Technical Requirements--Handling Fund.  
16 TAC §67.102. Technical Requirements--Recordkeeping.  
TRD-200503099  
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Filed: July 28, 2005

◆ ◆ ◆



# TABLES & GRAPHICS

---

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

---

Figure: 10 TAC §80.240(a)(1)

**MAXIMUM SPACING FOR DIAGONAL TIES (WIND ZONE I ONLY!)**

<b>Minimum Nominal Widths Single/Double Section</b>				
<b>Max. Vertical Distance</b>	<b>12/24 wide</b>	<b>14/28 wide</b>	<b>16/32 wide</b>	<b>18/36 wide</b>
20" to 24"	11 ft	14 ft	15 ft	16 ft
25" to 29"	9 ft	12 ft	14 ft	15 ft
30" to 40"	8 ft	10 ft	12 ft	14 ft
41" to 48"	7 ft	9 ft	11 ft	13 ft
49" to 60" (see note 3)	6 ft	8 ft	10 ft	12 ft
61" to 67" (see notes 3 & 10)	5 ft	6 ft	8 ft	10 ft
Minimum number of longitudinal ties, each end of each section.	1 at min. 58° angle from vertical	2 at min. 32° angle from vertical	2 at min. 38° angle from vertical	2 at min. 46° angle from vertical
<b>Notes:</b> 1) This chart applies to single and multi section homes. 2) Anchoring components are rated at 4725 lbs. ultimate load. Anchoring components and equipment shall be installed in accordance with the anchoring component and equipment manufacturer's installation instructions or the generic standards in §80.55(d)(4). 3) Single section units shall have diagonal ties directly opposite each other along the two main I-beams. Multi section units need diagonal ties on the outer-most main I-beam only. When vertical distance exceeds 48", connect diagonal tie to opposite beam. 4) Ties installed at each end of the home shall be within 24 inches of each end of the applicable I-beam. 5) The distance between any two ties may be exceeded to avoid an obstruction, as long as the total number of ties remains the same, and no two anchors shall be within 4 ft of each other. See the table in §80.240(a)(2). 6) Any vertical ties present on homes must be attached to a ground anchor. Both vertical and diagonal ties may be connected to a single double-headed anchor, if the anchor manufacturer's installation instructions allow for the combined loading. 7) The vertical distance is measured from the anchor head to the underside of the floor joists. 8) No two anchors shall be within 4 ft of each other. 9) Other stabilizing systems registered with the Department may replace longitudinal and/or lateral ties as long as the system manufacturer's installation instructions are followed. 10) Piers of greater heights are allowed if they are within limits established in adopted federal standards.				

Figure: 10 TAC §80.240(a)(2)

**MINIMUM NUMBER OF DIAGONAL TIES REQUIRED PER SIDE, PER UNIT LENGTH**  
**(WIND ZONE I ONLY)**

unit length (ft)	o.c. spacing (ft)												
	4	5	6	7	8	9	10	11	12	13	14	15	16
40	10	8	7	6	6	5	5	4	4	4	4	3	3
42	11	9	7	6	6	5	5	5	4	4	4	4	3
44	11	9	8	7	6	5	5	5	4	4	4	4	4
46	12	9	8	7	6	5	5	5	5	4	4	4	4
48	12	10	8	7	7	6	5	5	5	4	4	4	4
50	13	10	9	8	7	6	6	5	5	5	4	4	4
52	13	11	9	8	7	6	6	5	5	5	4	4	4
54	14	11	9	8	7	7	6	6	5	5	5	4	4
56	14	11	10	8	8	7	6	6	5	5	5	4	4
58	15	12	10	9	8	7	6	6	6	5	5	5	4
60	15	12	10	9	8	7	7	6	6	5	5	5	5
62	16	13	11	9	8	7	7	6	6	5	5	5	5
64	16	13	11	10	9	8	7	6	6	6	5	5	5
66	17	13	11	10	9	8	7	7	6	6	5	5	5
68	17	14	12	10	9	8	7	7	6	6	6	5	5
70	18	14	12	10	9	8	8	7	7	6	6	5	5
72	18	15	12	11	10	9	8	7	7	6	6	6	5
74	19	15	13	11	10	9	8	7	7	6	6	6	5
76	19	15	13	11	10	9	8	8	7	7	6	6	6
Note: If unit length is not listed use next higher tabulated length.													

Figure: 10 TAC §80.240(a)(3)

**MAXIMUM SPACING FOR DIAGONAL TIES (WIND ZONE II)**  
**PER SIDE OF THE ASSEMBLED UNIT**

<b>Minimum Nominal Widths Single/Double Section</b>				
<b>Max. Vertical Distance</b>	<b>12/24 wide</b>	<b>14/28 wide</b>	<b>16/32 wide</b>	<b>18/36 wide</b>
20" to 24"	7 ft	8 ft	8 ft	8 ft
25" to 29"	6 ft	7 ft	8 ft	8 ft
30" to 40"	5 ft	6 ft	7 ft	8 ft
41" to 48"	4 ft	5 ft	6 ft	7 ft
49" to 60" (see note 3)	4 ft	6 ft	6 ft	6 ft
61" to 67" (see notes 3 & 10)	4 ft	4 ft	4 ft	4ft
Minimum number of longitudinal ties, each end of each section.	2 at min. 58° angle from vertical	2 at min. 32° angle from vertical	3 at min. 38° angle from vertical	3 at min. 46° angle from vertical

*Notes:*

- 1) This chart applies to single and multi section homes.
- 2) Anchor components are rated at 4725 lbs. ultimate load.
- 3) Single section units shall have diagonal ties directly opposite each other along the two main I-beams. Multi section units need diagonal ties on the outer-most main I-beam only. When vertical distance exceeds 48", connect diagonal tie to opposite beam.
- 4) Ties installed at each end of the home shall be within 24 inches of each end of the applicable I-beam.
- 5) The distance between any two ties may be exceeded to avoid an obstruction, as long as the total number of ties remains the same, and no two anchors shall be within 4 ft of each other. See the table in §80.240(a)(2).
- 6) Any vertical ties present on homes must be attached to a ground anchor. Both vertical and diagonal ties may be connected to a single double-headed anchor, if the anchor manufacturer's installation instructions allow for the combined loading.
- 7) The vertical distance is measured from the anchor head to the underside of the floor joists.
- 8) No two anchors shall be within 4 ft of each other.
- 9) Other stabilizing systems registered with the Department may replace longitudinal and/or lateral ties as long as the system manufacturer's installation instructions are followed.
- 10) Piers of greater heights are allowed if they are within limits established in adopted federal standards.

Figure: 10 TAC §80.240(a)(4)

**MAXIMUM CENTERLINE WALL OPENING FOR COLUMN UPLIFT BRACKETS**

	---Maximum opening based on floor widths---			
	12 Wide (140" max)	14 Wide (164" max.)	16 Wide (186" max.)	18 Wide (210" max.)
One Single Bracket (2-lags) either side of column.	17'-6"	15'-0"	13'-3"	11'-9"
Two Single Brackets (2-lags each), one each side of column.	35'-0"	30'-0"	26'-6"	23'-6"
One Double Bracket (4-lags) either side of column. Spans are on both sections, opposite each other.	31'-9"	27'-2"	23'-11"	21'-2"
*Two Double Brackets (4-lags) either side of column. Spans are on both sections, opposite each other.	40'-0"	40'-0"	40'-0"	40'-0"
<i>* For openings larger than 40'-0", consult a local licensed professional engineer or architect.</i>				

Figure: 10 TAC §80.240(a)(5)

**Floor Connections - Wind Zone I and II**

	min 5/16 lag screw	# 10 wood screw
<b>Wind Zone I</b>	max. 36"	max. 24"
<b>Wind Zone II</b>	max. 24"	max. 12"

Figure: 10 TAC §80.240(a)(6)

**Roof Connection - Fastener Type and Spacing:**

	----- maximum o.c. spacing (in) -----		
	3/8 Lag	1/4 Lag	#10 wood screw
<b>Wind Zone I</b>	36"	24"	24"
<b>Wind Zone II</b>	20"	16"	12"

Figure: 10 TAC §80.240(a)(7)

**MAIN PANEL BOX FEEDER CONDUCTOR SIZES**

Main Breaker size (amps)	Raceway diameter	Red/Black (power)	White (neutral)	Green (grounding)
50	1	#6	#6	#8
100	1 1/4	#2 or #3	#2 or #3	#6
150	1 1/2	#1/0 or #2/0	#2	#6
200	2	#3/0	#2	#6

Figure: 10 TAC §80.240(a)(8)

**FOOTER CAPACITIES (LBS)**

-----Soil Bearing Capacity-----

Footer size	1000psf	1500psf	2000psf	2500psf	3000psf	3500psf	4000psf
16x16x4	1700	2700	3500	4400	5300	6100	7000
20x20x4	2700	4100	5500	6900	8300	9400	11000
16x32x4	3500	5200	6800	8600	10400	12000	14000
24x24x4	4000	6000	8000	10000	12000	14000	16000

**Notes:**

- 1) 8x16x4 footers may be used for perimeter and/or exterior door supports. Capacity is half that of the tabulated values for a 16x16x4 footer. For double 8x16x4 footers use the 16x16x4 row.
- 2) Footers of material other than concrete may be used if registered with the Department and the listed capacity and area is equal to or greater than the footer it replaces. Concrete footers of sizes not listed may be used as long as their size is equal to or greater than the size listed.
- 3) Footers with loads greater than 8,000 lbs. require a double stacked pier.
- 4) All poured concrete is minimum 2500 psi at 28 days.
- 5) Actual footer dimensions may be 3/8 inch less than the nominal dimensions for solid concrete footers conforming to the specifications in ASTM C90-99a, Standard Specification for Load bearing Concrete Masonry Units.

Figure: 10 TAC §80.240(a)(9)

**PIER LOADS (LBS) AT TABULATED SPACINGS**  
**(WITHOUT PERIMETER SUPPORTS)**

----- maximum pier spacing -----

Unit Width(ft)	4 ft o.c.	5 ft o.c.	6 ft o.c.	7 ft o.c.	8 ft o.c.
12 Wide	1725	2150	2600	3000	3400
14 wide	2000	2500	3000	3500	4000
16 Wide	2350	2900	3500	4100	4700

**Note:** 18 ft. wides require perimeter support per the table in §80.240(a)(10).

**Example:** Determine maximum pier spacing for a 16 ft. wide x 76 ft. long single section with a soil bearing capacity of 1500 psf. Footer size to be used is a single 16x16x4 precast concrete footer.

**Step 1:** In the table in §80.240(a)(8) look up the maximum load for a single 16x16x4 pad set on 1500 psf soil.  
Answer = 2700 psf

**Step 2:** In the table in §80.240(a)(9) in the column for 16 ft. wide, find the on-center spacing (o.c.) load equal to or less than the footer capacity of 2700 lbs found in the table in §80.240(a)(8).

**Answer:** The 4ft column shows minimum capacity of 2350 lbs.  
Therefore, for a 16 ft. wide and a soil bearing capacity of 1500 psf using 16x16x4 footers the maximum pier spacing is 4 ft. o.c.

Figure: 10 TAC §80.240(a)(10)

**PIER LOADS (LBS) AT TABULATED SPACINGS**  
**(WITH PERIMETER SUPPORTS)**

----- **maximum I-Beam pier spacing** -----

<b>Unit width (ft)</b>	<b>4 ft o.c.</b>	<b>6 ft o.c.</b>	<b>8 ft o.c.</b>	<b>10 ft o.c.</b>	<b>12 ft o.c.</b>
12 Wide	750	1150	1500	1900	2300
14 Wide	1050	1600	2100	2600	3100
16 Wide	1200	1800	2400	3000	3600
18 Wide	1450	2150	2850	3600	4300

Note: Maximum I-Beam pier spacing is 8 ft. o.c. for 8" I-Beam, 10 ft. o.c. for 10" I-Beam and 12 ft. o.c. for 12" I-Beam or the resultant maximum spacing based on soil bearing and footer size per the table in §80.240(a)(8), whichever is less.

----- **maximum perimeter pier spacing** -----

<b>Unit width (ft)</b>	<b>4 ft o.c.</b>	<b>5 ft o.c.</b>	<b>6 ft o.c.</b>	<b>7 ft o.c.</b>	<b>8 ft o.c.</b>
12 Wide	1000	1200	1500	1700	1900
14 Wide	1100	1400	1650	1900	2200
16 Wide	1300	1600	1900	2250	2500
18 Wide	1600	2000	2300	2700	3000

Example: Determine maximum I-Beam pier spacing for a 16 ft. wide with 12" I-Beam, perimeter support and 1500 psf soil bearing capacity.

Step 1: From the table in §80.240(a)(8), the maximum load for a 16x16x4 at 1500 psf soil is 2700 lbs.

Step 2: From the table in §80.240(a)(10), the I-Beam pier load @ 10 ft. o.c. is 3000 lbs ==> no good,  
the I-Beam pier load @ 8 ft. o.c. is 2400 lbs ==> ok  
I-Beam pier spacing is at 8 ft. o.c.

Step 3: The perimeter pier load @ 8ft. o.c. is 2500 lbs ==> ok  
Perimeter pier spacing is at 8 ft. o.c.

Figure: 10 TAC §80.240(a)(11)

**MATING LINE COLUMN LOADS (LBS)**

-----Unit width in feet (nominal)-----

Span in feet	12 Wide	14 Wide	16 Wide
4	720	840	960
6	1080	1260	1440
8	1440	1680	1920
10	1800	2100	2400
12	2160	2520	2880
14	2520	2940	3360
16	2880	3360	3840
18	3240	3780	4320
20	3600	4200	4800
22	3960	4620	5280
24	4320	5040	5760
26	4680	5460	6240
28	5040	5880	6720
30	5400	6300	7200
32	5760	6720	7680
34	6120	7140	8160
36	6480	7560	8640

Note: If actual span is not shown use next higher tabulated span.



Figure: 10 TAC §80.240(a)(12)

**Enforcement Matrix**

<b>Nature of Violation</b>	<b>Range of Recommended Actions</b>
1 <sup>st</sup> time--no dangerous conditions or loss to consumers--addressed promptly	1 <sup>st</sup> time violator letter
1 <sup>st</sup> time--no dangerous conditions or loss to consumers--not addressed promptly	Up to \$250 fine
1 <sup>st</sup> time--darger to consumer and/or significant loss to consumer--addressed promptly	Up to \$500 fine
1 <sup>st</sup> time--danger to consumer and/or significant loss to consumer--not addressed promptly	\$500-1000 fine
Recurring--no dangerous conditions or loss to consumers--addressed promptly	Up to \$250 fine for 1 <sup>st</sup> recurrence; up to \$500 for 2 <sup>nd</sup> recurrence, up to \$1000 PLUS a written plan to prevent additional violations for 3 <sup>rd</sup> recurrence
Recurring--no dangerous conditions or loss to consumers--not addressed promptly	Up to \$500 fine for 1 <sup>st</sup> recurrence; up to \$1000 for 2 <sup>nd</sup> recurrence, up to \$1000 and/or seek suspension for 3 <sup>rd</sup> recurrence
Recurring--danger to consumer and/or significant loss to consumer--addressed promptly	\$500 -1000 for first recurrence; seek suspension (may be probated) for 2 <sup>nd</sup> recurrence; revocation for 3 <sup>rd</sup> recurrence
Recurring--danger to consumer and/or significant loss to consumer--not addressed promptly	Up to maximum allowed by law for 1 <sup>st</sup> recurrence; seek suspension (may be probated) for 2 <sup>nd</sup> recurrence; revocation for 3 <sup>rd</sup> recurrence

Figure: 10 TAC §80.240(b)(1)

### **Counties Located in Wind Zone II**

The following counties in Texas are considered to be in Wind Zone II (100 mph):

- |               |                   |
|---------------|-------------------|
| (1) Aransas   | (9) Kleberg       |
| (2) Brazoria  | (10) Matagorda    |
| (3) Calhoun   | (11) Nueces       |
| (4) Cameron   | (12) Orange       |
| (5) Chambers  | (13) Refugio      |
| (6) Galveston | (14) San Patricio |
| (7) Jefferson | (15) Willacy      |
| (8) Kenedy    |                   |

All other counties are in Wind Zone I.

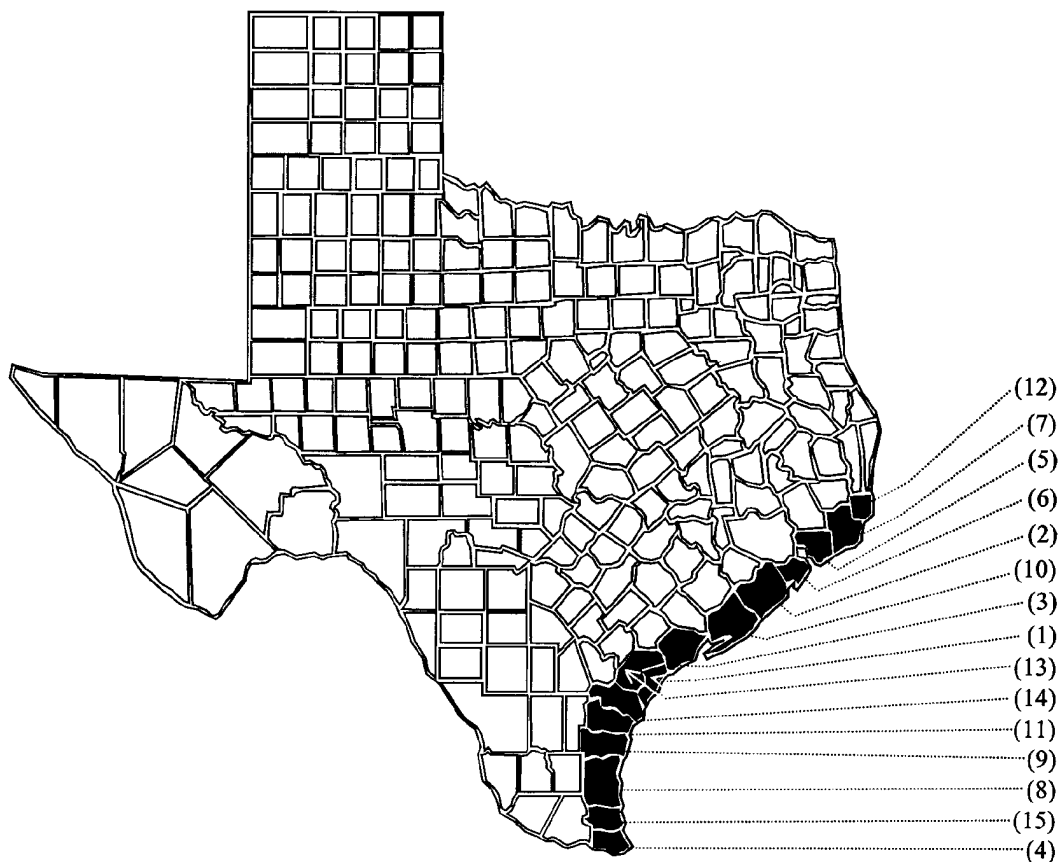


Figure: 10 TAC §80.240(b)(2)

### **ANCHOR INSTALLATION**

**Notes:**

- 1) Anchor head must be not more than 1 inch from the ground at insertion point.
- 2) Anchor head may be inset a maximum of 6 inches from the vertical outer edge of the floor framing to allow for skirting installation.

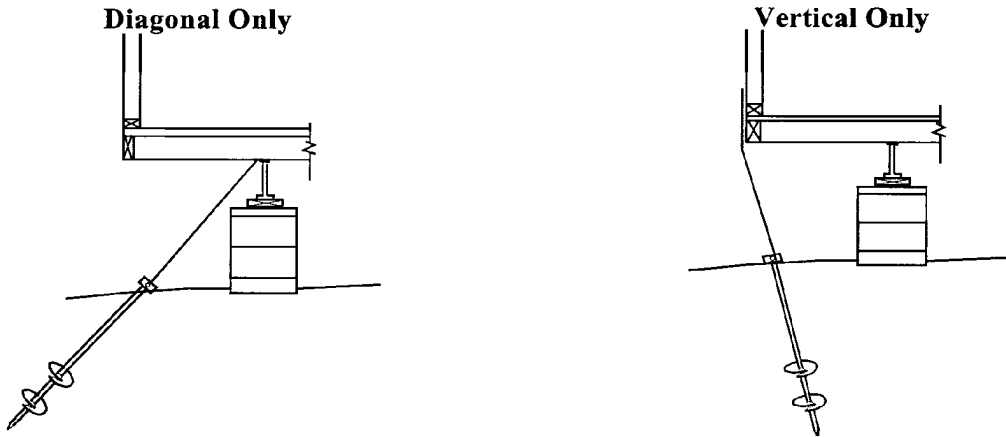
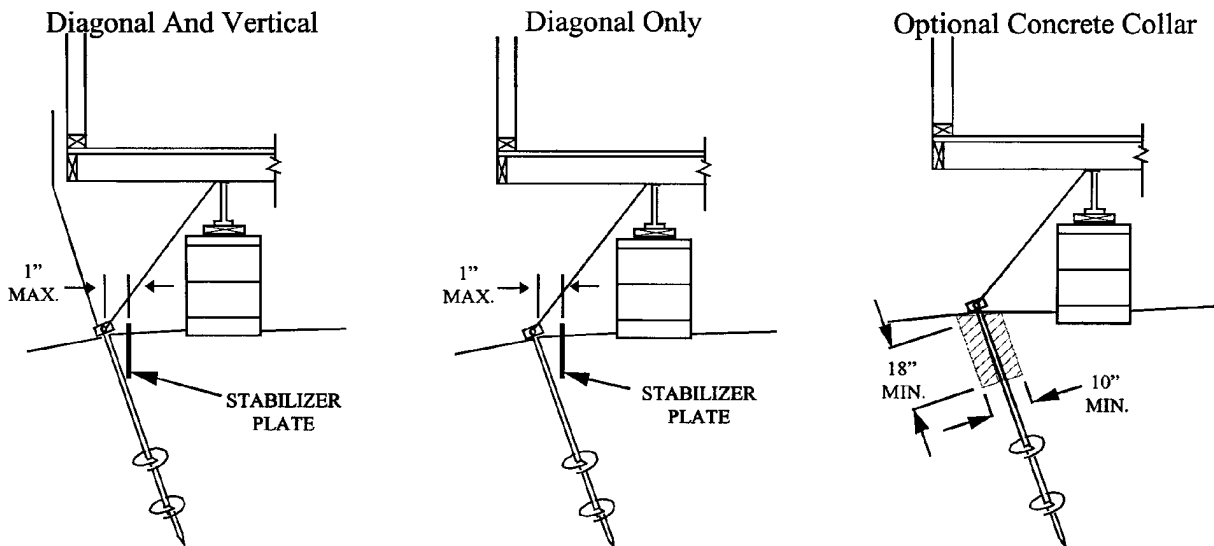


Figure: 10 TAC §80.240(b)(3)

### **PLACEMENT OF STABILIZING DEVICES**



**Notes:**

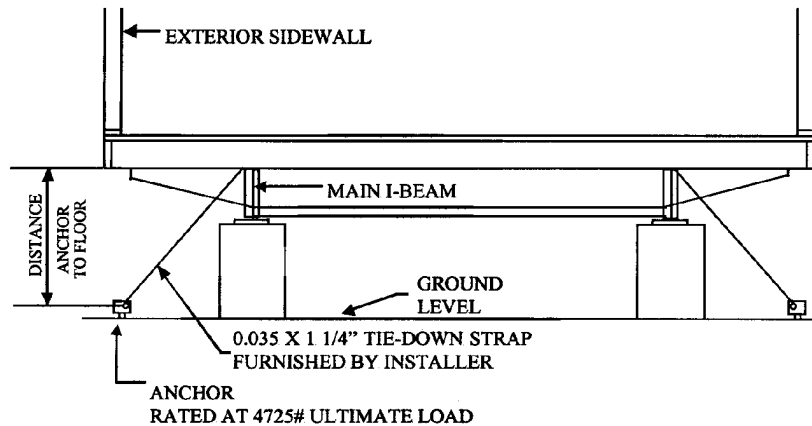
- 1) Stabilizer plate may be replaced with a concrete collar that is at least 18 inches deep and 10 inches in diameter or other approved devices.
- 2) Diagonal tie must depart from the top of the I-Beam as shown.
- 3) The top of the stabilizer plate must be within 1 inch of the anchor shaft.
- 4) Stabilizer plates and other approved devices must be installed in accordance with the product manufacturer's instructions.

Figure: 10 TAC §80.240(b)(4)

**WIND ZONE I – SINGLE/MULTI-SECTION INSTALLATION**

*(Refer to other figures for depictions of proper anchor and stabilizer device installation.)*

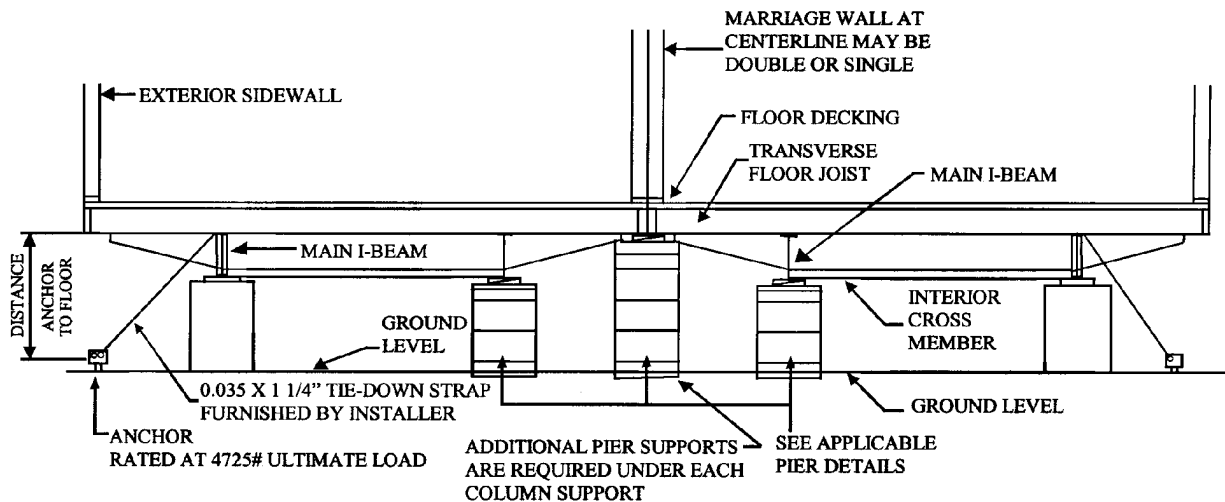
**Figure 1: Single Section**



**Notes:**

- 1) Single section units require diagonal ties to be directly opposite each other.
- 2) All existing vertical ties must be connected to a ground anchor.
- 3) Diagonal tie spacing per the table in §80.240(a)(1) or §80.55(d)(4). Vertical distance in this table refers to the distance of the anchor head to the underside of the floor joists as shown above.
- 4) Diagonal tie must depart from the top of the I-Beam as shown.

**Figure 2: Multi-Section**



**Notes:**

- 1) Multi-section units require diagonal ties on the outer main I-Beams only.
- 2) Diagonal ties need not be directly opposite each other.
- 3) Diagonal tie spacing per the table in §80.240(a)(1) or §80.55(d)(4). Vertical distance in this table refers to the distance of the anchor head to the underside of the floor joists as shown above.
- 4) Existing vertical ties must be connected to a ground anchor.
- 5) Diagonal tie must depart from the top of the I-Beam as shown.

Figure: 10 TAC §80.240(b)(5)

**DIAGONAL STRAP PLACEMENT FOR PIERS EXCEEDING 36 INCHES IN HEIGHT**

*(Refer to other figures for depiction of proper anchor and stabilizer device installation.)*

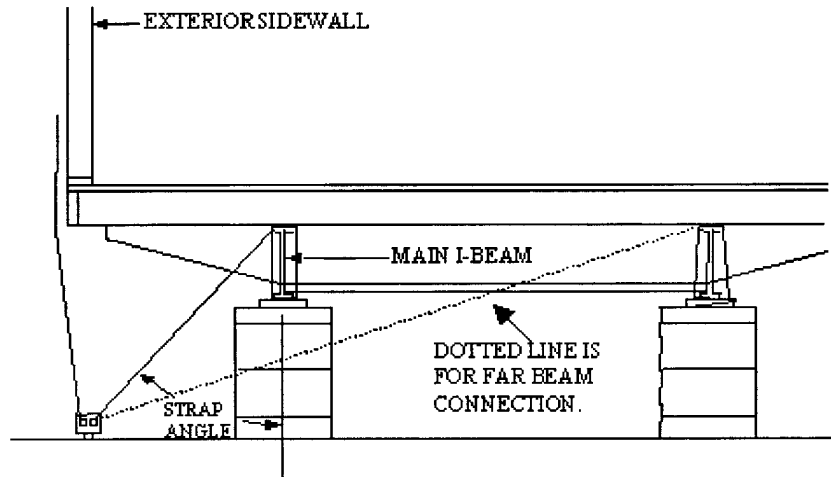


Figure: 10 TAC §80.240(b)(6)

**DIAGONAL AND VERTICAL TIES**

*(Refer to other figures for depiction of proper anchor and stabilizer device installation.)*

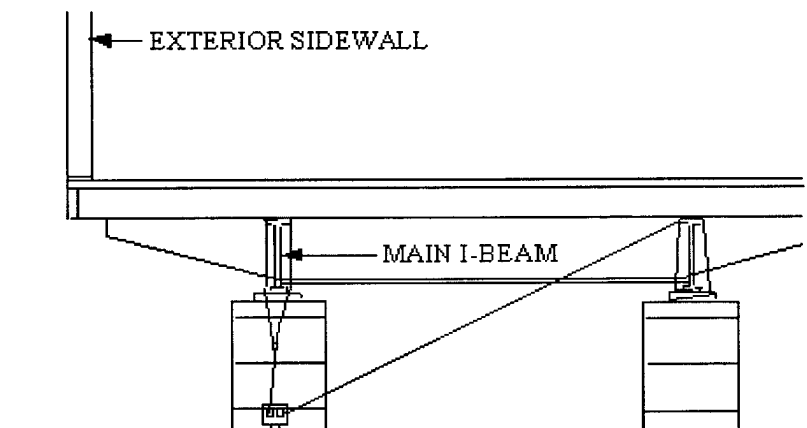
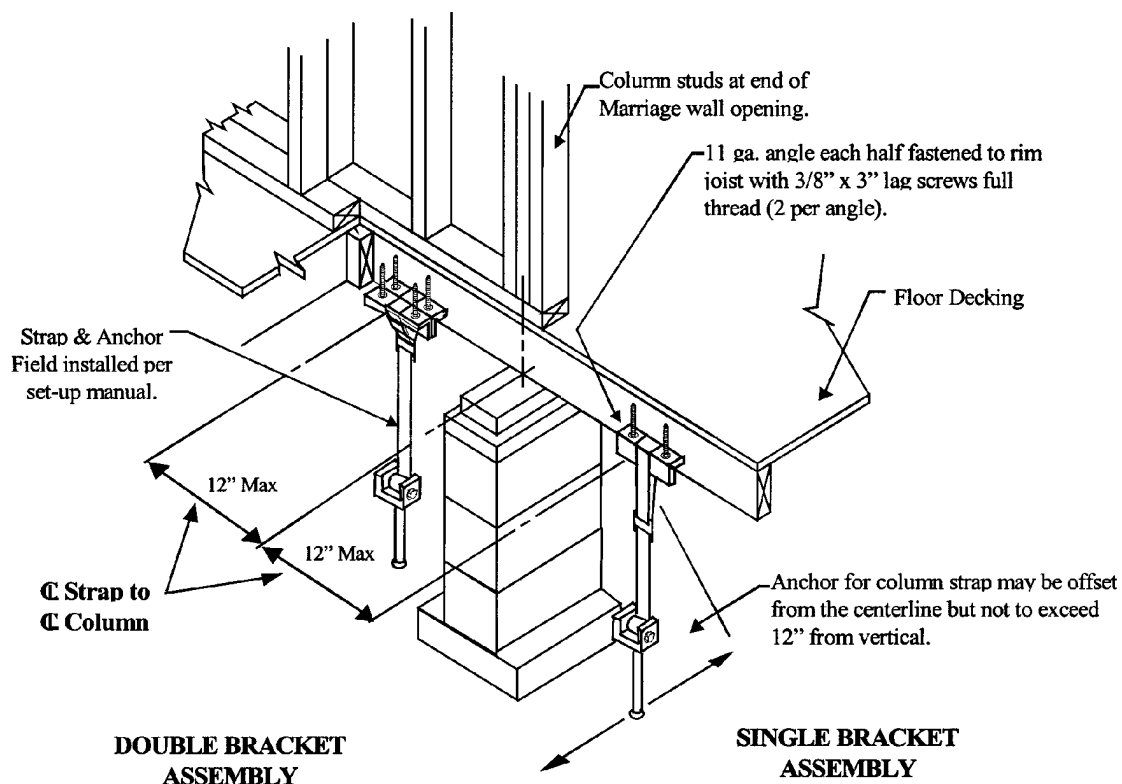


Figure: 10 TAC §80.240(b)(7)

### **TYPICAL INSTALLATION DETAILS**



**Note:** Anchors, straps, buckles and crimps shown are for illustration purposes only. All components used must be registered with the Department.

Figure: 10 TAC §80.240(b)(8)

### ANCHOR SPAN

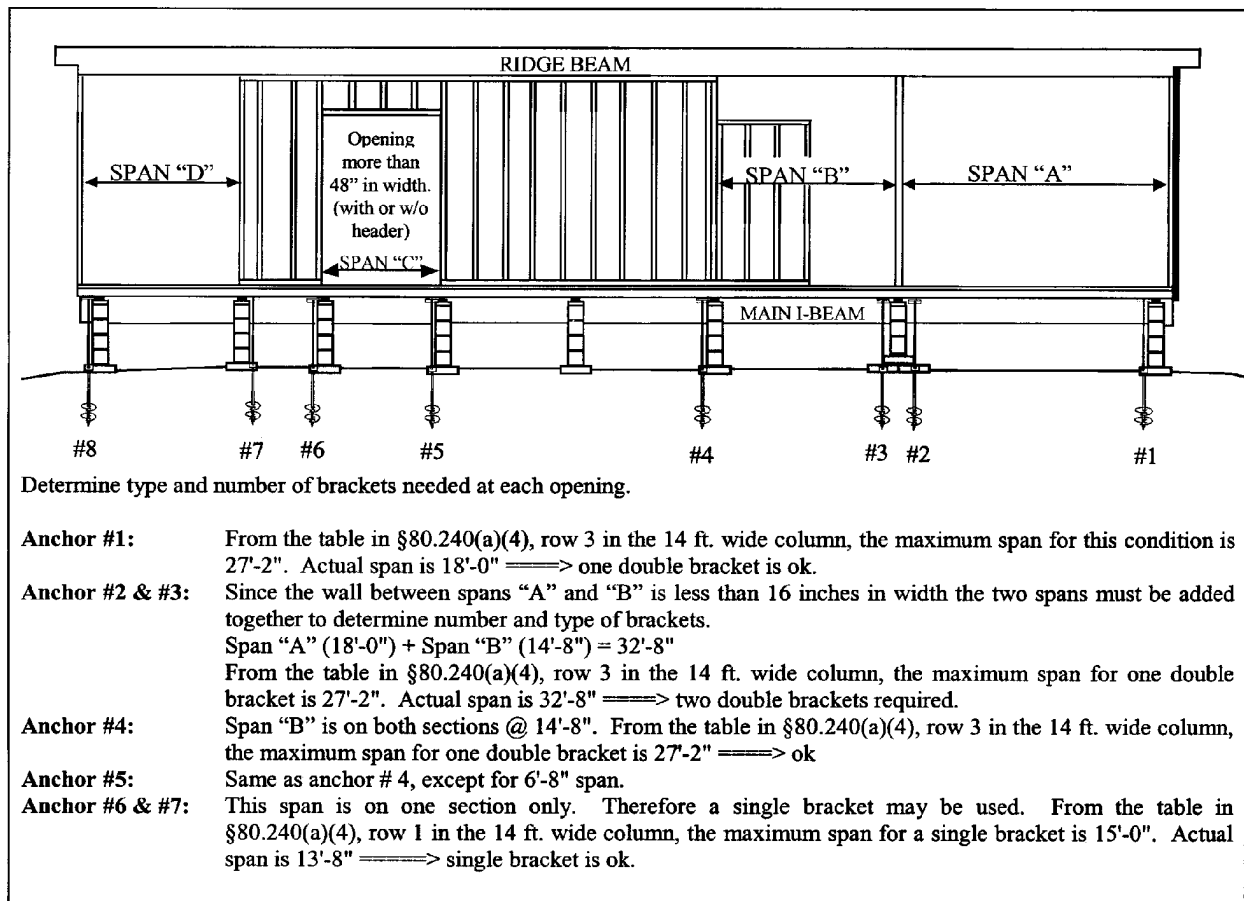


Figure: 10 TAC §80.240(b)(9)

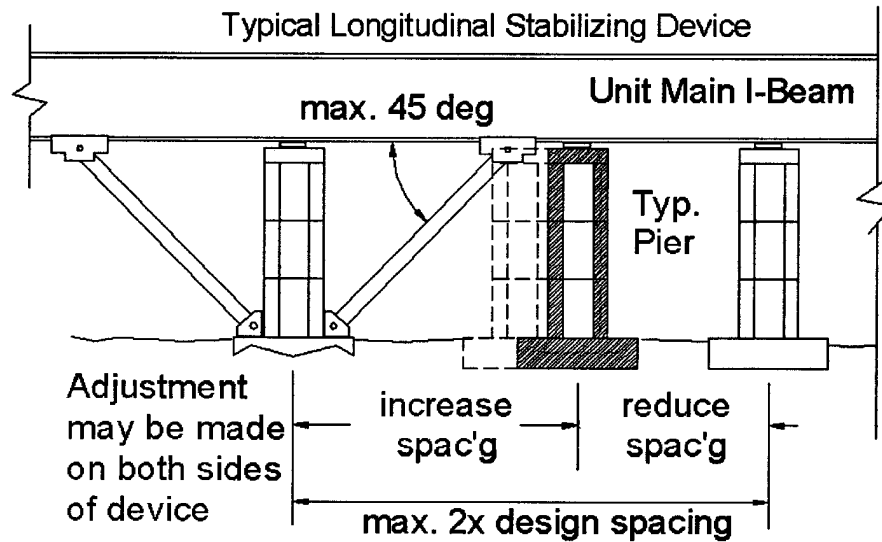


Figure: 10 TAC §80.240(b)(10)

### LONGITUDINAL TIES

Figure 1

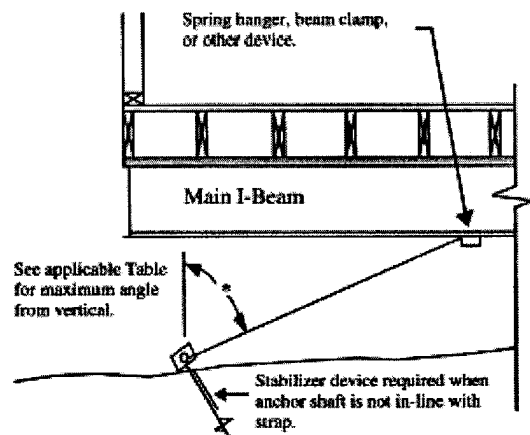


Figure 1: Connection to existing spring hangers, factory installed or site installed beam clamps.

Figure 2

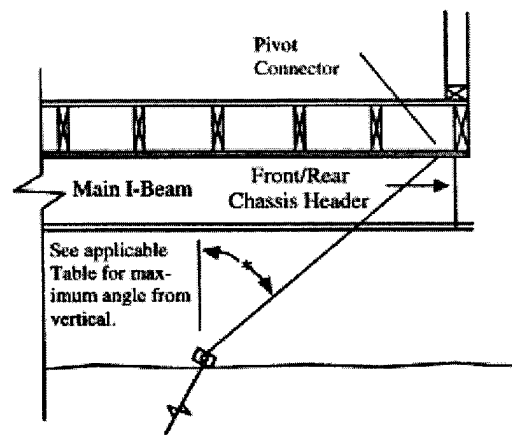


Figure 2: Connection to front or rear chassis headers. Strap must be installed within 12" of where the header member connects to the main I-beam.



Figure: 10 TAC §80.240(b)(11)

**MATING LINE SURFACES**

Mating line surfaces are along the floor, up the front and rear endwalls and along the ceiling line.

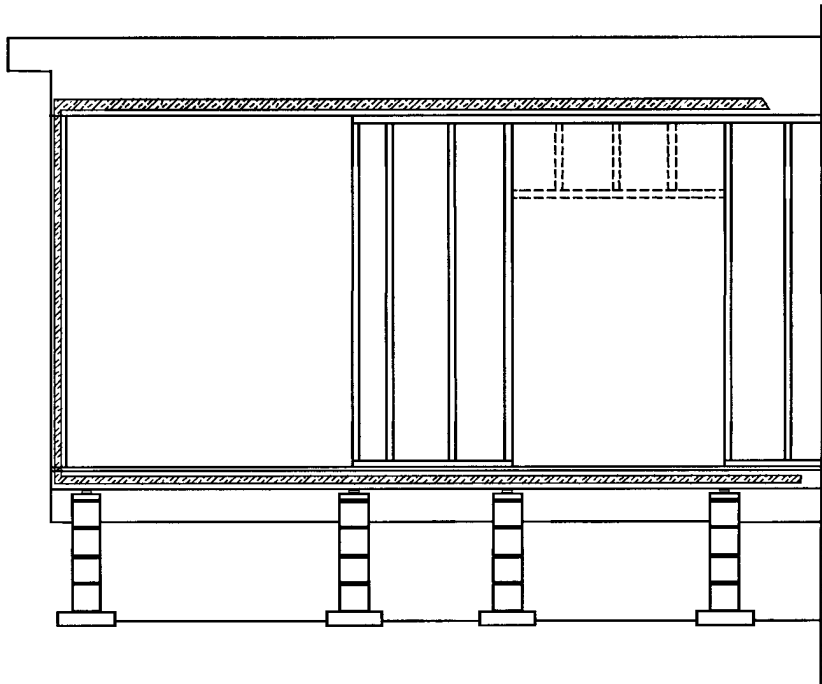


Figure: 10 TAC §80.240(b)(12)

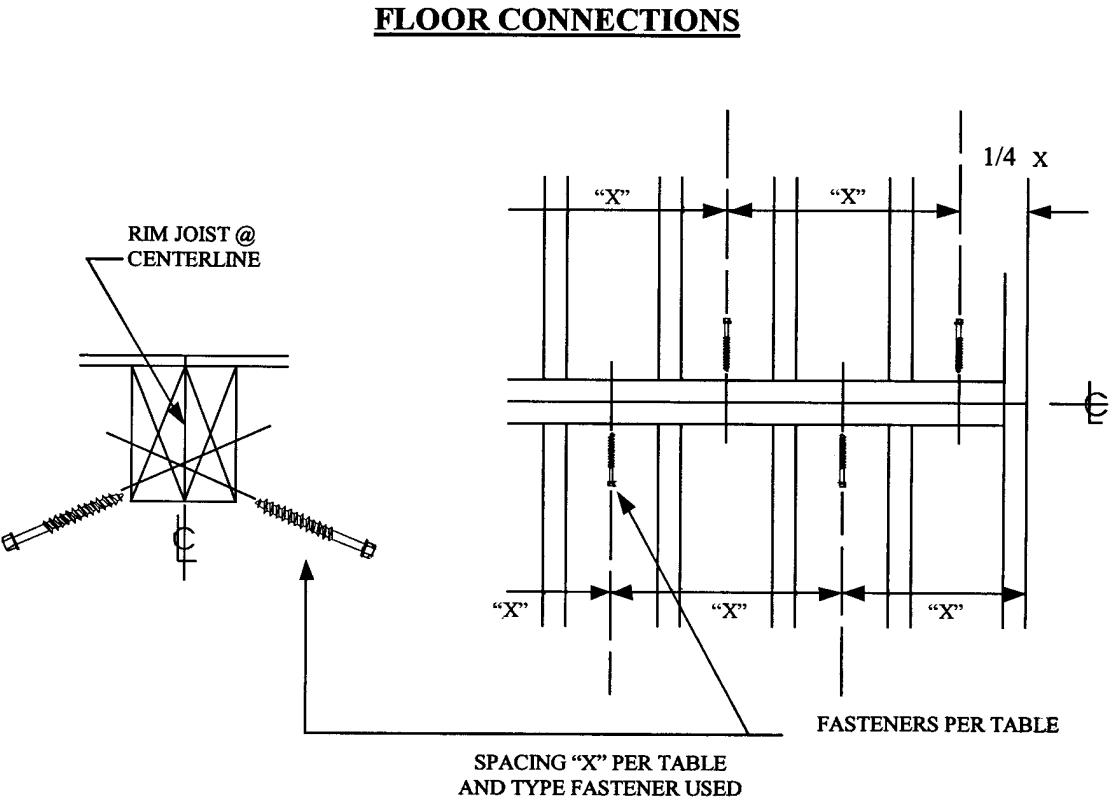


Figure: 10 TAC §80.240(b)(13)

### **ENDWALL CONNECTIONS**

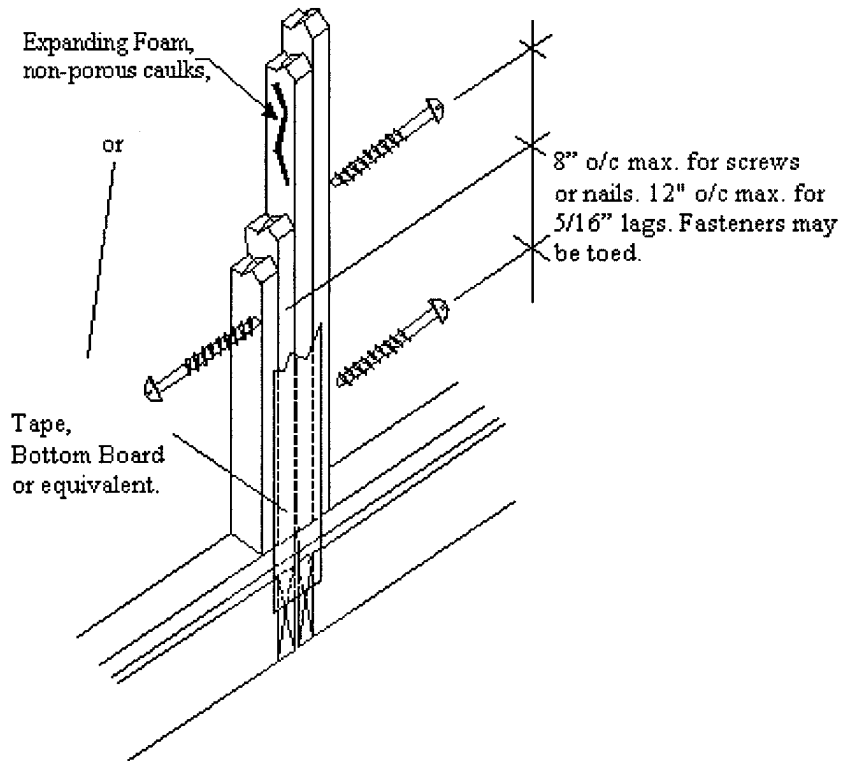


Figure: 10 TAC §80.240(b)(14)

**ROOF CONNECTION**

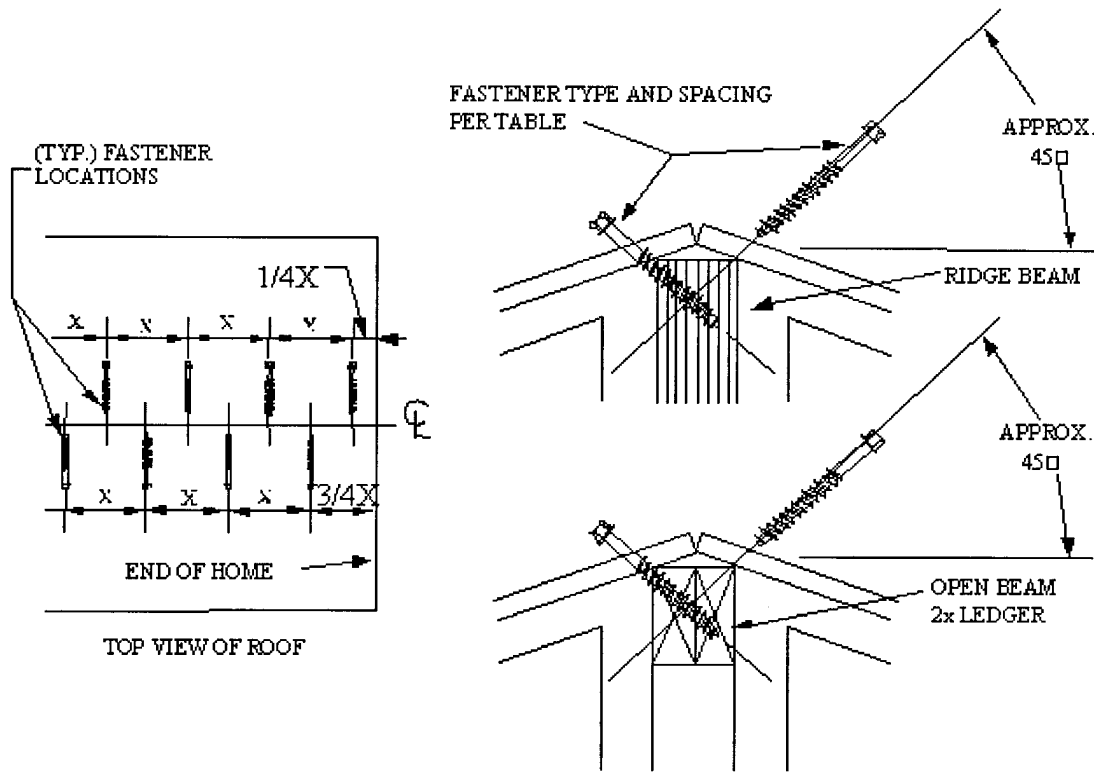


Figure: 10 TAC §80.240(b)(15)

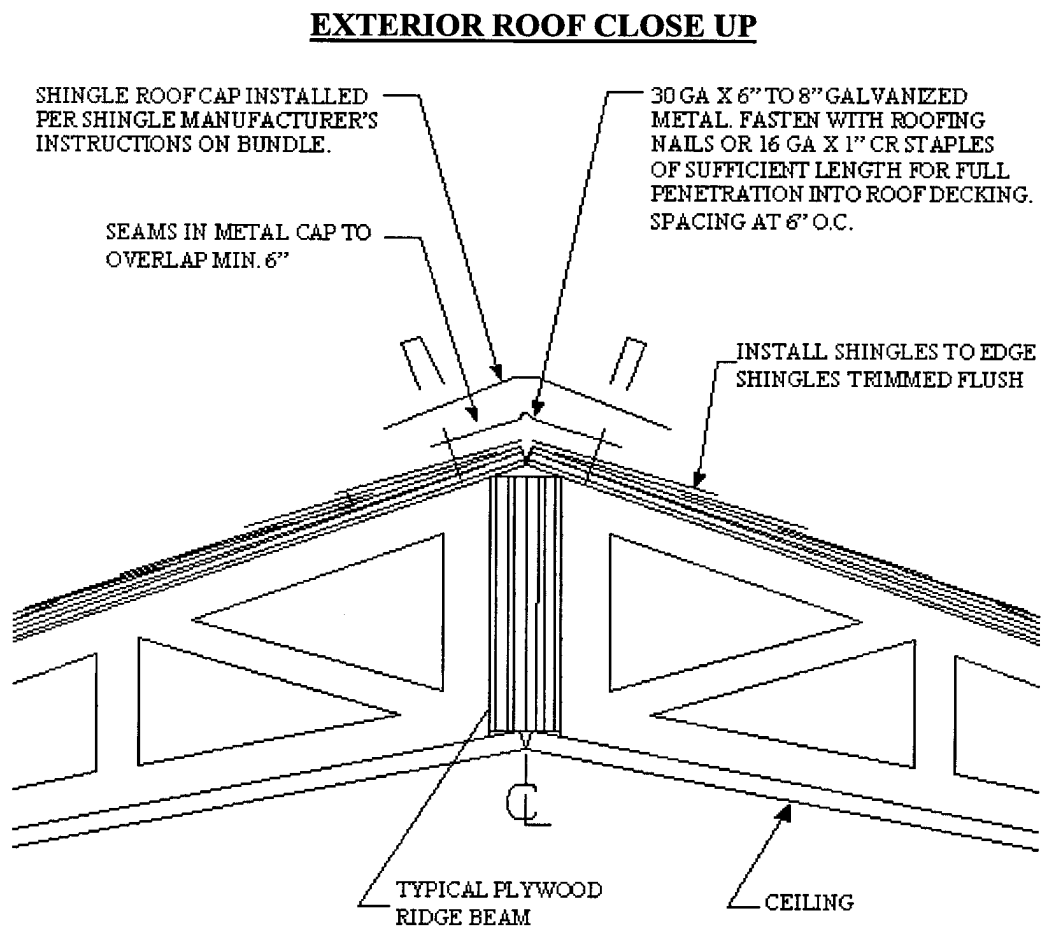


Figure: 10 TAC §80.240(b)(16)

**HVAC (HEAT/COOLING) DUCT CROSSOVER**

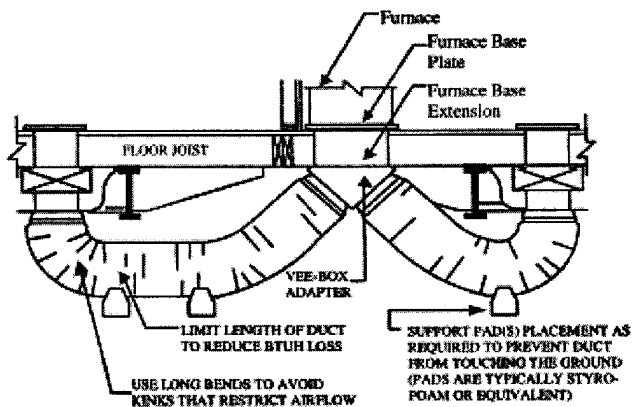
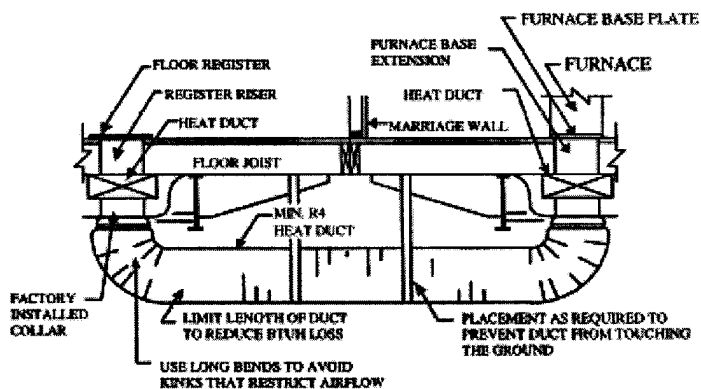
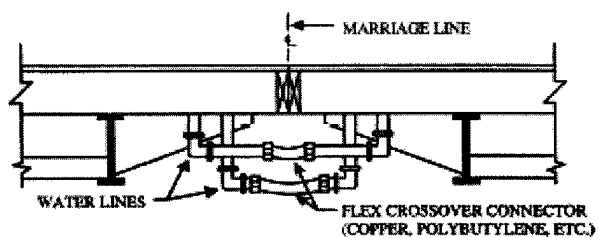


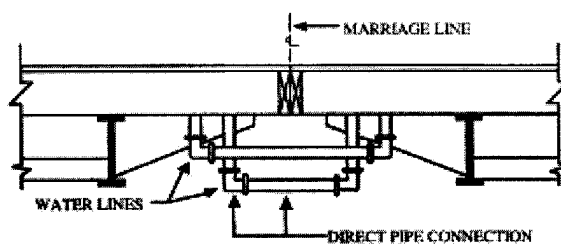
Figure: 10 TAC §80.240(b)(17)

## **MULTI-SECTION WATER CROSSOVER CONNECTIONS**

### **METHOD A**



### **METHOD B**



### **METHOD C**

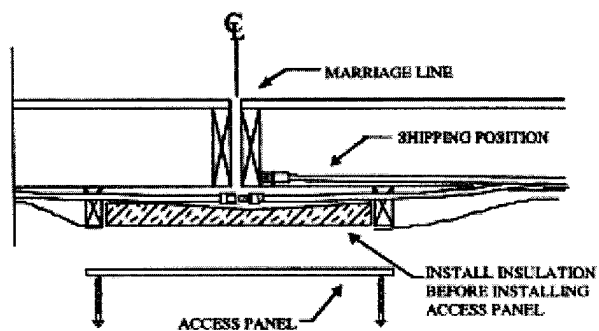


Figure: 10 TAC §80.240(b)(18)

**DRAIN, WASTE AND VENT FLOOR PIPING SYSTEM**

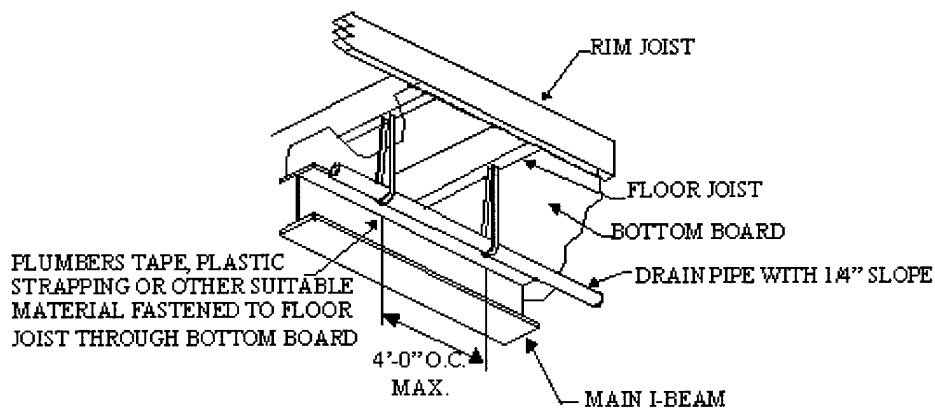
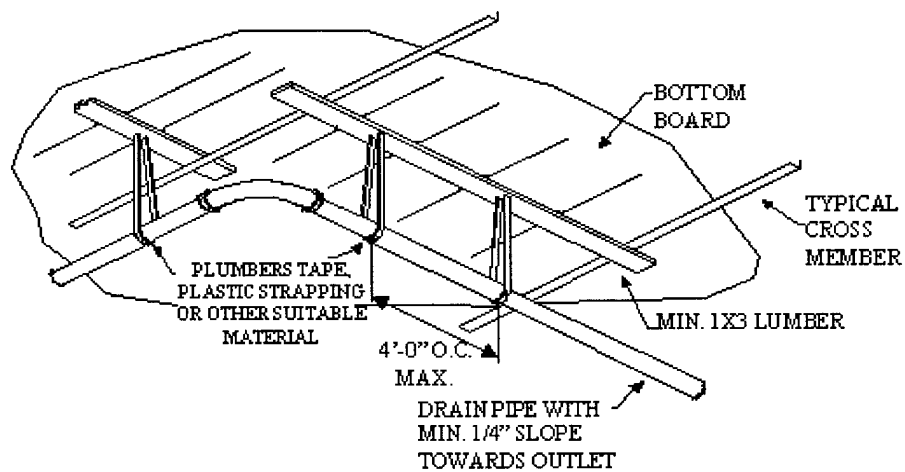
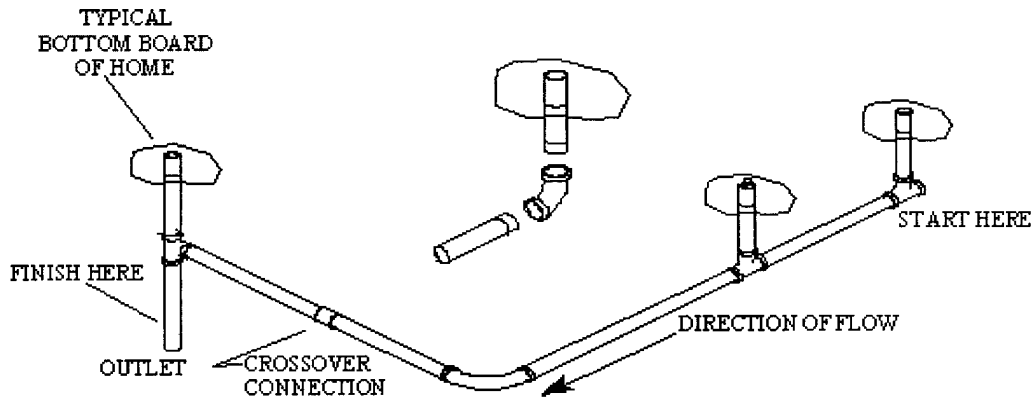
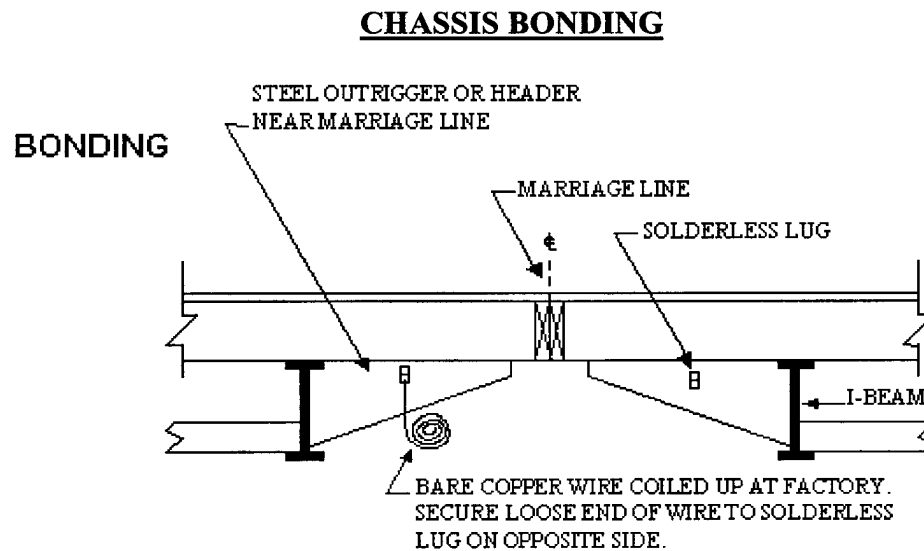




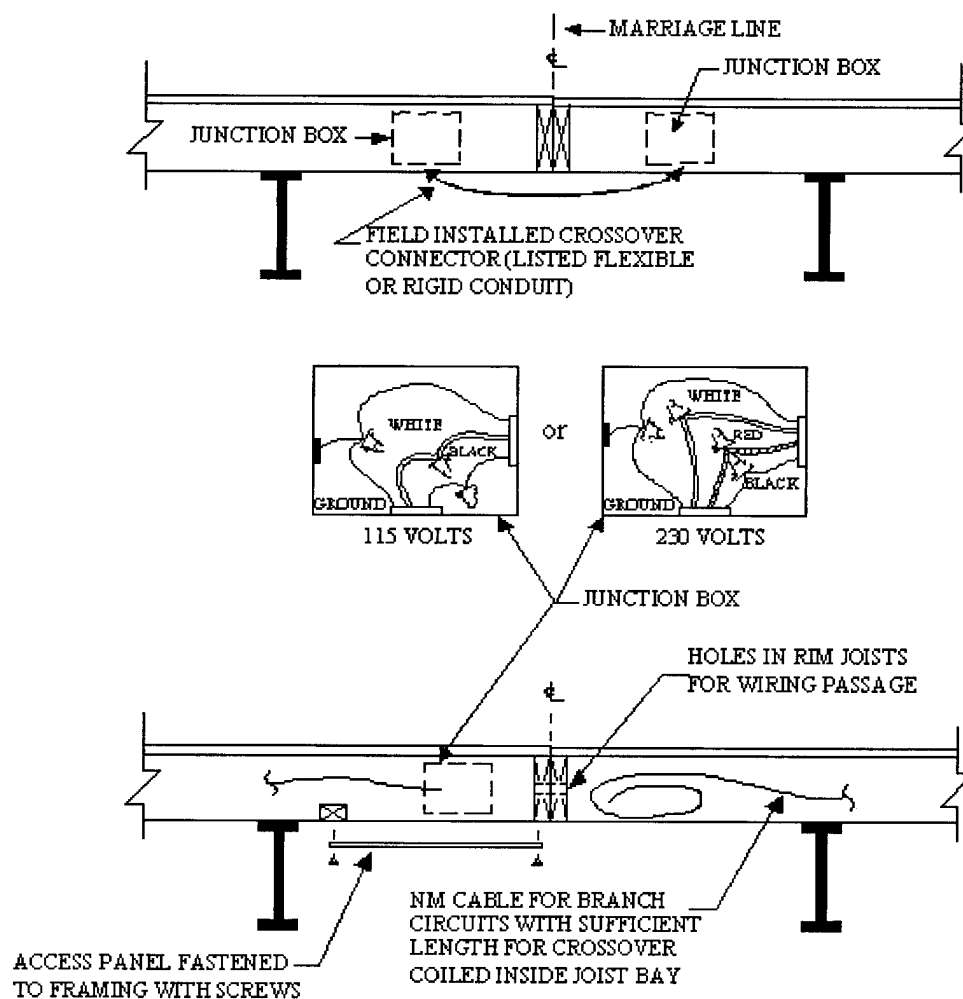
Figure: 10 TAC §80.240(b)(19)



NOTE:  
A 4" BONDING STRAP MAY BE USED INSTEAD OF COPPER  
WIRE BY ATTACHING THE STRAP TO BOTH UNITS WITH  
2 #8X3/4" SELF-TAPPING METAL SCREWS ON EACH SIDE.

Figure: 10 TAC §80.240(b)(20)

## ELECTRICAL CROSSOVER

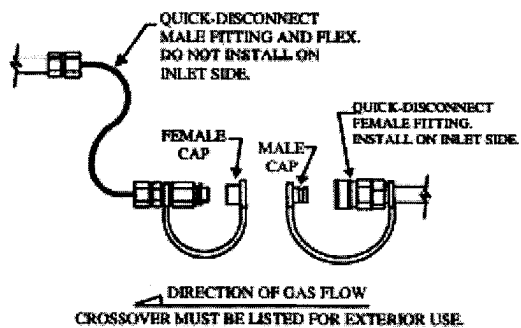


NOTE:  
ANY EXPOSED NM CABLE MUST BE PROTECTED BY  
CONDUIT AND INSTALLED IN ACCORDANCE WITH  
THE N.E.C.

Figure: 10 TAC §80.240(b)(21)

### **FUEL GAS PIPE CROSSOVER CONNECTIONS**

**Method A**



**Method B**

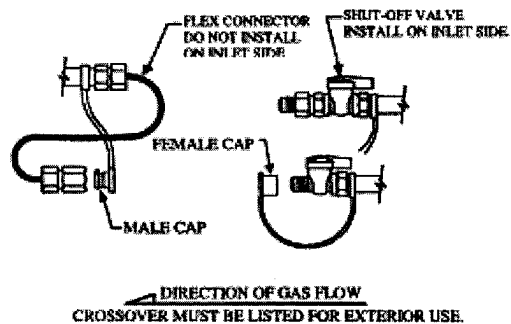
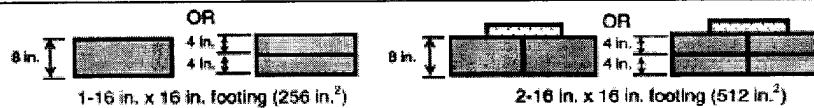
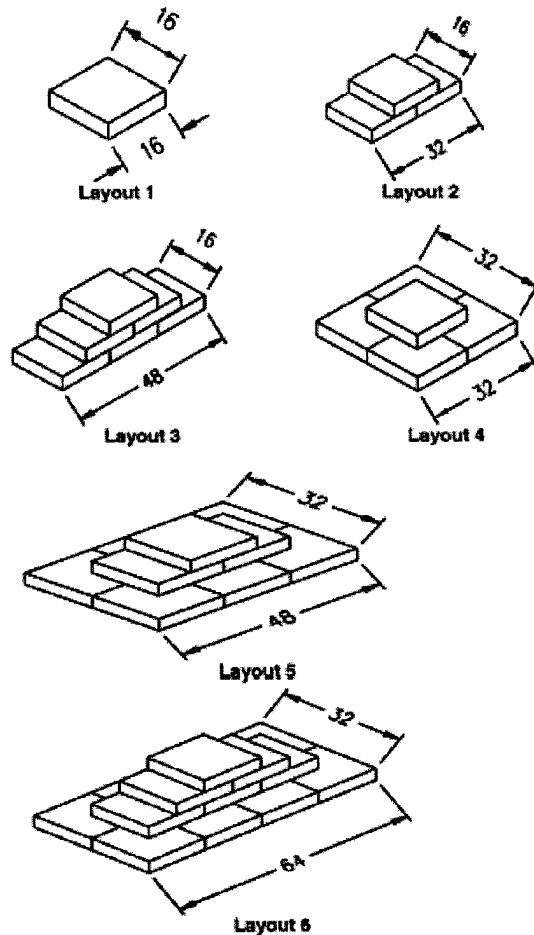


Figure: 10 TAC §80.240(b)(22)

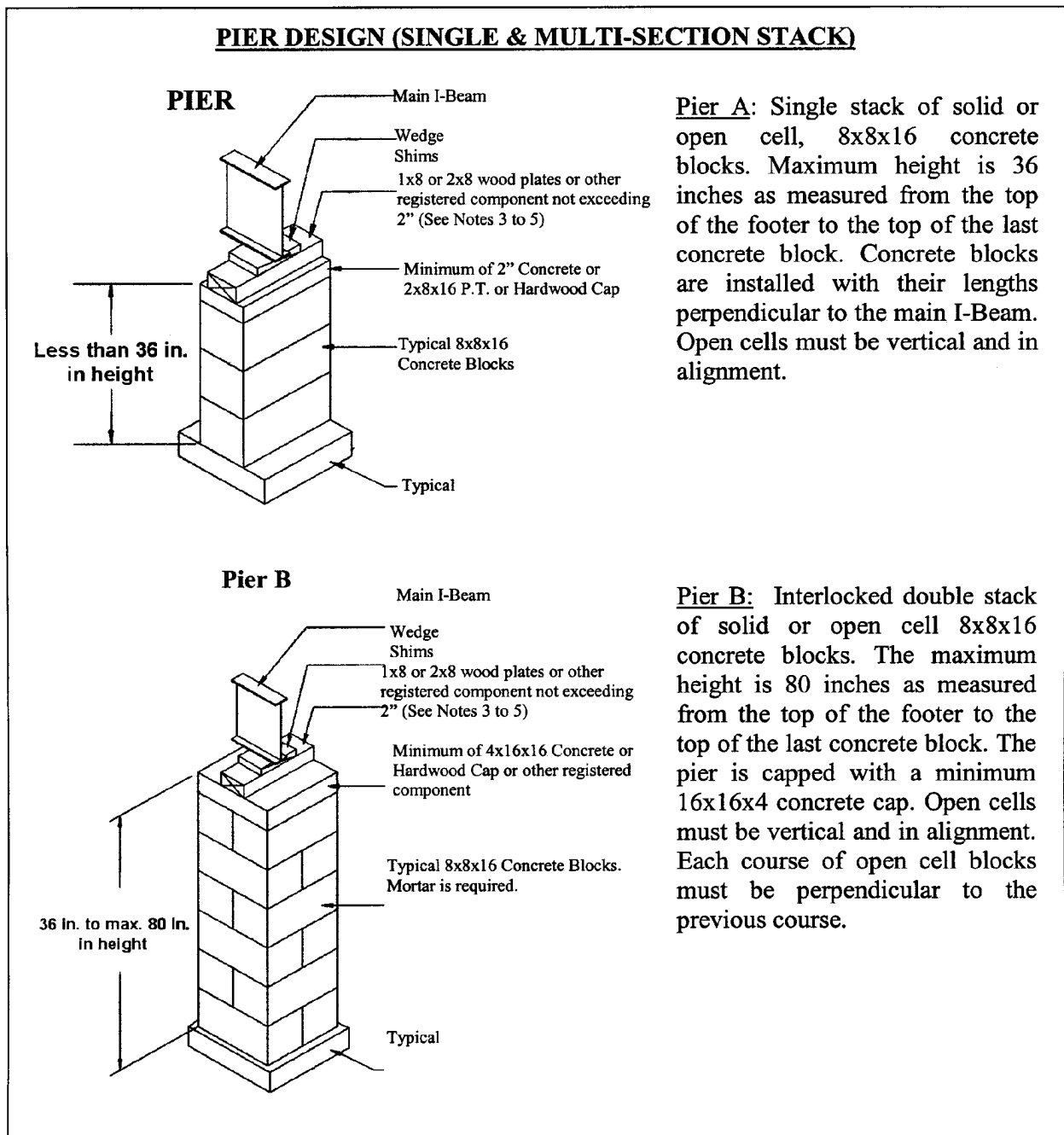
### FOOTER CONFIGURATIONS



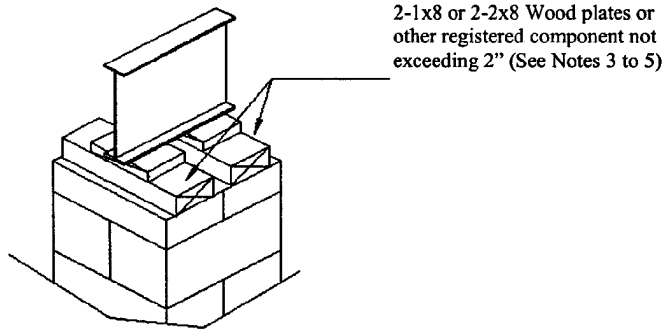
**Notes:**

1. Typical pier pad: 16 in. x 16 in. x 4 in. thick precast concrete.
2. For shaded area, the thickness of the pad shall be minimum 8 in. or place two pads one on top of the other.
3.  $F_c = 4000$  psi min.
4. For SI units, 1 in. = 25.4 mm; 1 in.<sup>2</sup> = 645 mm<sup>2</sup>.

Figure: 10 TAC §80.240(b)(23)



### Pier B-1

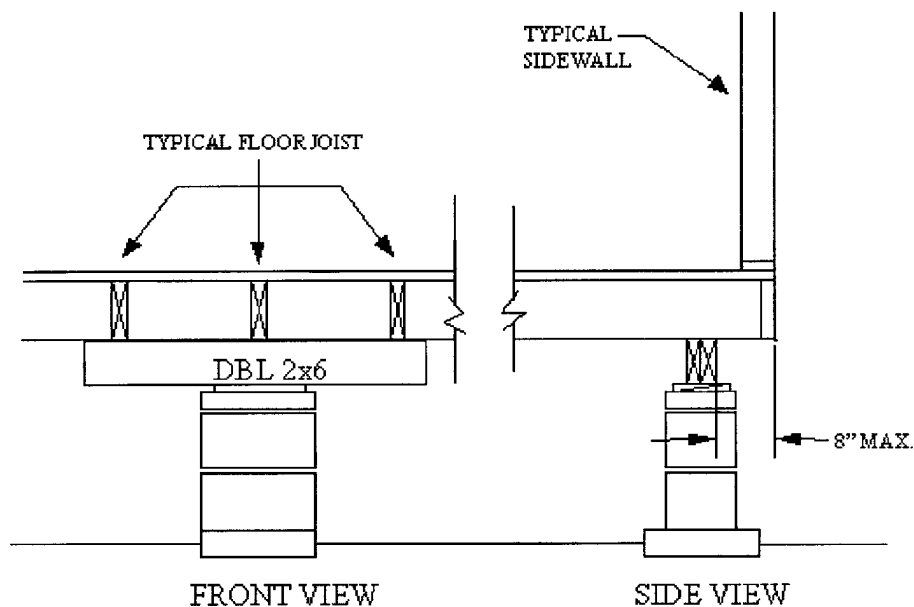


**Note:**

- 1) Open cell and solid concrete blocks shall meet ASTM-C90-99a, Standard Specification for Load bearing Concrete Masonry Units.
- 2) Support system components are to be undamaged and installed in a manner to accomplish the purpose intended.
- 3) Either wood caps or shims must be used between I-Beam and concrete.
- 4) Preservation treated (PT) wood components shall conform to the applicable standards issued by the American Wood Preserver's Association and referenced by the latest edition of the International Residential Code.
- 5) When concrete caps are used, wood plates or other registered components are required. When wood caps are used, wood plates shall not be used.

Figure: 10 TAC §80.240(b)(24)

**PERIMETER PIER FRONT & SIDE VIEW**



**Notes:**

- 1) Perimeter pier may be inset from edge of floor up to 8". The 2x6 brace may be omitted if the front face of a perimeter pier is flush with the perimeter joist and the perimeter pier supports the intersection of an interior joist and perimeter joist.
- 2) Dbl 2x6 are min. #3 Yellow Pine or pressure treated Spruce-Pine, nailed together with min. 16d galvanized nails 2-rows at maximum 8" o.c.
- 3) 2x6 brace must span at least two (2) but not more than three (3) floor joists.

Figure: 10 TAC §80.240(b)(25)

### TYPICAL MULTI-SECTION PIER LAYOUT

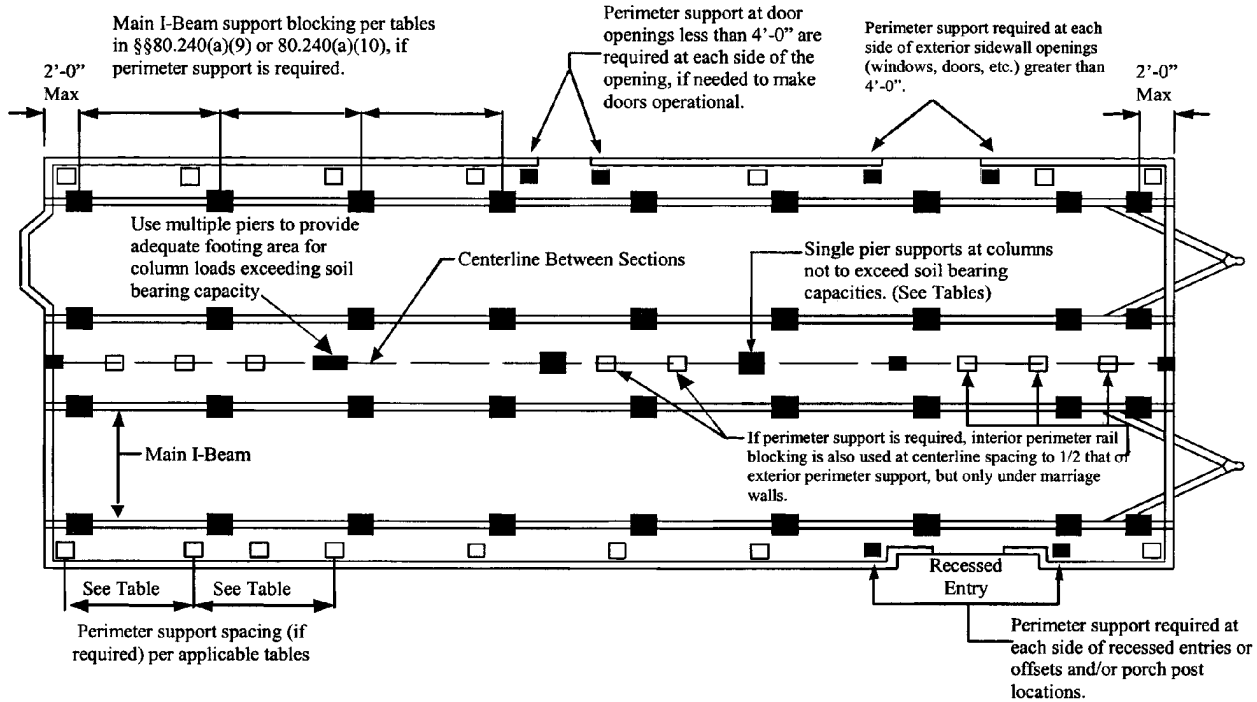


Figure: 10 TAC §80.240(b)(26)

### TYPICAL SINGLE SECTION PIER LAYOUT

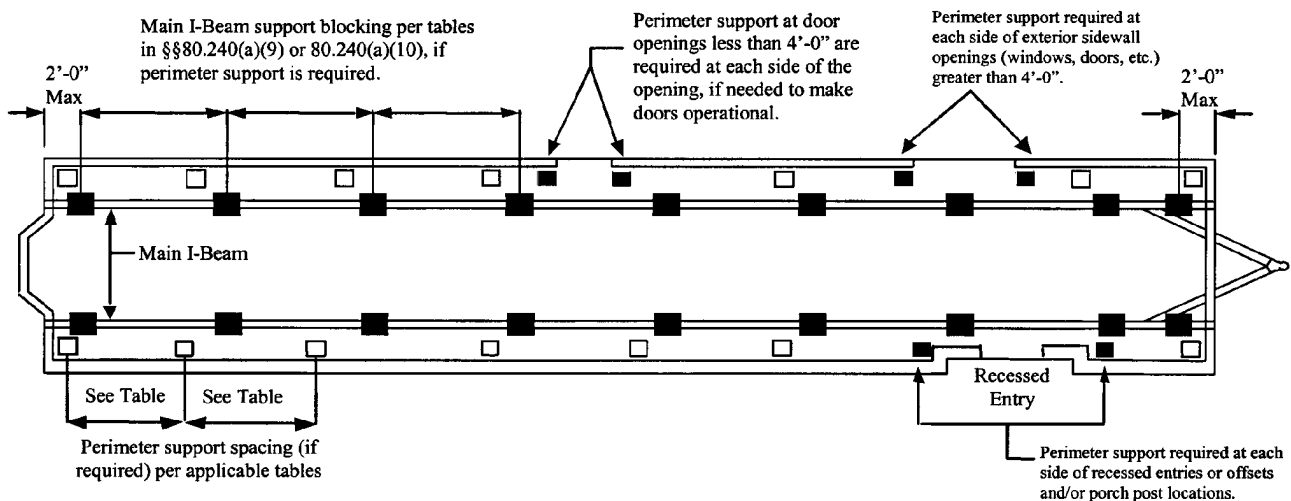




Figure: 10 TAC §80.240(b)(27)

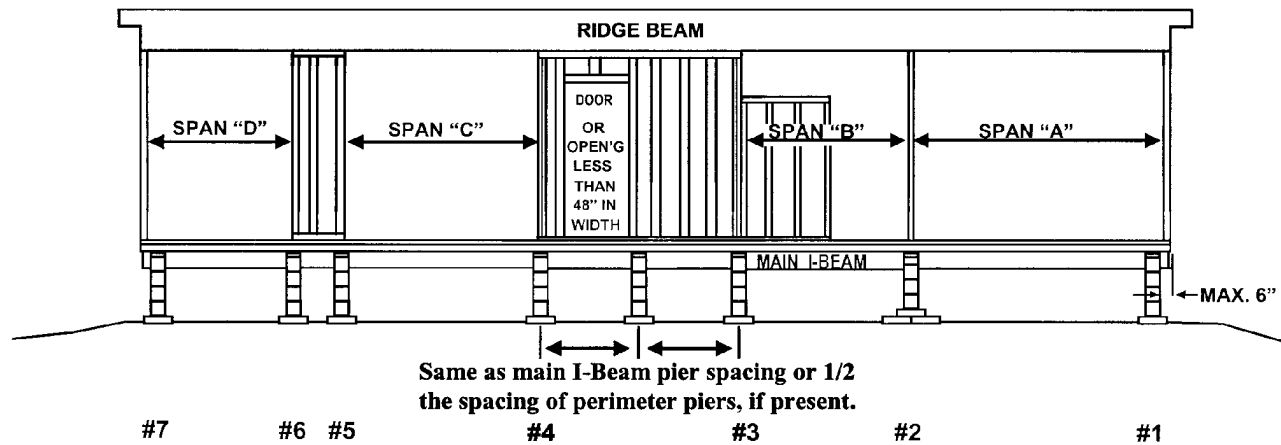
### **DETERMINING COLUMN LOAD**

To determine the column load for Column #1 at the endwall look up Span "A" in the table in §80.240(a)(11). To determine the column load for Column #2, look up the combined distance of both Span "A" and Span "B".

To determine the column load for Column #3 look up Span "B" in the table.  
(NOTE: Mating line walls not supporting the beam must be included in the span distance.)

To determine the loads for Columns #4 and #5 look up Span "C". For Columns #6 and #7 look up load for span "D".

### **MARRIAGE LINE ELEVATION**



## **SITE PREPARATION NOTICE**

**FAILURE TO PREPARE THE SITE PROPERLY BEFORE INSTALLING YOUR MANUFACTURED HOME MAY INVALIDATE YOUR WARRANTY AND MAY CAUSE PROBLEMS WITH YOUR HOME.**

**IF YOU ARE ACQUIRING LAND FOR A MANUFACTURED HOME AND WILL NOT HAVE THE ABILITY TO OVERSEE SITE PREPARATION YOURSELF, BE SURE THAT YOUR AGREEMENT WITH THE PARTY PROVIDING THE LAND COVERS THEIR RESPONSIBILITIES FOR SITE PREPARATION.**

If you are acquiring a manufactured home you need to be sure that the site is properly prepared **BEFORE the home is installed**. If you will be having your home installed in a rental community, you should first be sure that the community has prepared the site properly and assumed that responsibility. If you are acquiring a manufactured home that is already installed, you should satisfy yourself that the site was properly prepared first.

Site Preparation includes AT LEAST the following: (1) selecting a site where the home will not be affected by rising or running water, as in the case of heavy rains, (2) grading the site, as needed, so that the land slopes away from the home, (3) making sure that the site will not create puddles or moisture build-up under the home by filling any depressions and, as needed, providing for drainage, (4) clearing away any plants, stumps, or debris on the site where the home will be placed, and (5) installing any required vapor retarder (and, if such a retarder is to be installed, trimming any grasses or other organic materials to a suitable height, not greater than 8").

The footing must be placed on firm, undisturbed soil, or fill compacted to at least 90% of its maximum relative density. Installation on loose, noncompacted fill may invalidate the home's limited warranty.

If, at the time of installation your retailer is providing skirting, the retailer must also provide and install any required vapor retarder and insure that there is adequate ventilation under the home. If the retailer is not providing these things, you should be sure that you have provided for any required vapor retarder and that you have provided adequately for ventilation under the home.

**FAILURE TO PREPARE THE SITE PROPERLY AND/OR FAILURE TO TAKE APPROPRIATE MEASURES TO GUARD AGAINST MOISTURE BUILD-UP MAY CAUSE SERIOUS PROBLEMS WITH YOUR MANUFACTURED HOME INCLUDING, BUT NOT LIMITED TO, MOISTURE IN THE HOME, DE-LAMINATION OF FLOOR DECKING, BUCKLING OF WALLS AND FLOORS, WARPAGE THAT WILL MAKE DOORS AND WINDOWS NOT OPERATE PROPERLY, FAILURE OF ANCHORS TO HOLD THE HOME AS INTENDED, AND EVEN SERIOUS STRUCTURAL DAMAGE.**

\_\_\_\_\_  
consumer's signature

\_\_\_\_\_  
consumer's signature

\_\_\_\_\_  
type or print name

\_\_\_\_\_  
type or print name

\_\_\_\_\_  
date

\_\_\_\_\_  
date

## **Consumer Disclosure Statement**

**\*Esta forma está disponible en Español a petición del vendedor o al llamar al 1-800-500-7074\***

“When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives. The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for manufactured homes. Manufactured homes that meet HUD standards are known as ‘HUD-code manufactured homes.’

The Texas Department of Housing and Community Affairs, regulates Texas manufacturers, retailers, brokers, salespersons, installers, and rebuilders of manufactured homes.

If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:

**“ZONING AND RESTRICTIVE COVENANTS”** Municipalities or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.

**“WATER”** Be sure that your lot has access to water. If you must drill a well contact several driller’s for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system.

**“SEWER”** If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.

**“HOMEOWNER ASSOCIATION FEES”** Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.

**“TAXES”** Your home will be appraised and subject to *ad valorem taxes* as are other single-family residential structures. These taxes **MUST** be escrowed with your monthly payment, except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property. On closing, you will be notified of all provisions pertaining to federal truth in lending disclosures.

**"INSURANCE"** Your lender may require you to obtain insurance that meets lender requirements and protects your investment. You should request quotes from the agent of your choice to obtain the insurance.

**"TYPES OF MORTGAGES AVAILABLE"** The acquisition of a manufactured home may be financed by a real estate mortgage or a chattel mortgage. A real estate mortgage may have a lower interest rate than a chattel mortgage.

**"RIGHT OF RESCISSION"** If you acquire a manufactured home, by purchase, exchange, or lease-purchase, you may, not later than the THIRD DAY after the date the applicable contract is signed, rescind the contract WITHOUT PENALTY OR CHARGE.

This Disclosure was provided by the retailer and/or lender shown below on this date and it was provided to me or us before I or we completed a credit application or before signing a contract to purchase a manufactured home.

\_\_\_\_\_  
Retailer Name / License # or Lender      Date

\_\_\_\_\_  
Consumer      Date

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Consumer      Date

\_\_\_\_\_  
City      County      State      Zip

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City      County      State      Zip

**The disclosure must be given in writing in at least 12 point type. It may not be attached to any other disclosure or document or included in any other disclosure or document. The consumer must sign and date a copy of the disclosure to acknowledge that it was provided.**

Figure: 10 TAC §80.260(a)(3)

### **CONSUMER PROTECTION DISCLOSURE - CHATTEL MORTGAGE TRANSACTIONS**

Depending on whether you intend to keep your manufactured home as personal property or declare it as a part of real estate, you may (subject to lender approval) have a choice between a "chattel mortgage" (consumer loan) or "real estate mortgage" (mortgage). A variety of financing terms may be available. You may qualify for one type of financing, but not another. **The following are general significant differences between TYPICAL chattel mortgages and mortgages:**

	<b>CHATTEL MORTGAGES</b>	<b>MORTGAGES</b>
Security for the loan	Typically only the home	Typically the home and land
Homestead	NO for land, YES for home	YES for land and home
Site improvement requirements	Typically none	Often required (foundations, access, other lender requirements and/or inspections)
Interest Rates	May generally be higher, but not always: depends on circumstances	May generally be lower, but not always: depends on circumstances
Additional expenses	Typically none	Survey, appraisal, document preparation and recording fees, title insurance, mortgage insurance, interim construction finance costs
Time to process the loan	Typically shorter	Typically longer
Amortization	Typically 20 years	Typically 30 years
Foreclosure/repossession	Typically faster and easier for lender, can result in loss of home and personal judgment against you	Typically takes longer and more expensive for all parties, can result in loss of home and land, personal judgment against you

#### **TYPICAL COSTS ASSOCIATED WITH A CHATTEL MORTGAGE PURCHASE OF A MANUFACTURED HOME:**

Possible prepaid finance charges (rarely more than 3% of loan); escrow of taxes; homeowner insurance premiums

#### **EXAMPLES OF MONTHLY PAYMENTS IN TYPICAL CHATTEL MORTGAGE TRANSACTIONS:**

	<b>EXAMPLE 1</b>	<b>EXAMPLE 2</b>	<b>EXAMPLE 3</b>
Price (including inventory tax & title)	\$80,000	\$40,000	\$15,000
Down Payment	\$ 4,000 (5%)	\$ 4,000 (10%)	\$ 3,000 (20%)
Unpaid Balance	\$76,000	\$36,000	\$12,000
1 year Physical Damage insurance	\$ 1,200	\$ 900	\$ 400
Prepaid finance charges	\$ 1,544	\$ 738	\$ 248
<b>Total loan</b>	<b>\$78,744</b>	<b>\$37,638</b>	<b>\$12,648</b>
Term of loan (years/months)	20 yrs (240 months)	20 yrs (240 months)	7 yrs (84 months)
Contract interest rate	10%	12%	14%
Monthly principal & interest	\$759.90	\$414.43	\$237.02
1 <sup>st</sup> payment principal/interest	\$103.70 / \$656.20	\$38.05 / \$376.38	\$89.56 / \$147.56
Last payment principal/interest	\$753.64 / \$6.26	\$410.35 / \$4.08	\$234.28 / \$2.74
Monthly tax escrow*	\$139.91 (1)	\$115.48 (2)	\$64.70 (3)
Monthly insurance escrow	\$0	\$0	\$33.33
<b>Total monthly payment</b>	<b>\$899.81</b>	<b>\$529.91</b>	<b>\$276.82</b>

\*Examples do not include homestead exemptions and assumes taxes assessed at valuation equal to the purchase price, per \$100 of valuation.

(1) assumes taxes: county (.04698), school dist. (1.70714), hosp. dist. (.259), road & bridge (.0859);

(2) assumes taxes: county (.06505), ISD (1.61), hosp. dist. (.2133), water conserve. dist. (.29766);

(3) assumes taxes: ISD (1.285), college (1.9338), fire dist. (1.9495)

**I ACKNOWLEDGE RECEIPT OF THIS DISCLOSURE BEFORE COMPLETION OF MY FIRST CREDIT APPLICATION**

(sign)\_\_\_\_\_ (sign)\_\_\_\_\_ (date)\_\_\_\_\_

Figure: 10 TAC §80.260(a)(4)

**Texas Department of Housing and Community Affairs**  
**MANUFACTURED HOUSING DIVISION**  
P. O. BOX 12489 Austin, Texas 78711-2489  
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109  
Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code  
Internet Address: [www.tdhca.state.tx.us/mlh/index.htm](http://www.tdhca.state.tx.us/mlh/index.htm)

**NOTICE OF INSTALLATION (FORM T)**

HUD Label or Texas Seal # (s): \_\_\_\_\_ Serial # (s): \_\_\_\_\_

Manufacturer Name: \_\_\_\_\_ License No. \_\_\_\_\_

Home Size - Width / Length: \_\_\_\_\_ X \_\_\_\_\_ Weight \_\_\_\_\_ Date of Manufacture: \_\_\_\_/\_\_\_\_/\_\_\_\_ Model / Name: \_\_\_\_\_

**Draw A Map To Provide Directions To Home On Page 2**

Consumer: \_\_\_\_\_ Phone Numbers: Home: (\_\_\_\_) \_\_\_\_\_ Work: (\_\_\_\_) \_\_\_\_\_

Mailing Address: \_\_\_\_\_ ZIP: \_\_\_\_\_

Site Address: \_\_\_\_\_ Within City Limits of \_\_\_\_\_ ZIP: \_\_\_\_\_

County Where Home is Installed: \_\_\_\_\_

Actual Installation Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Wind Zone on Data Plate: I (\_\_\_\_) II (\_\_\_\_) III (\_\_\_\_)

	Name	Address	License #	Expiration Date	Phone #
Retailer					
Installer					

(\_\_\_\_) New (\_\_\_\_) Used Does retailer or installer provide skirting? Yes (\_\_\_\_) No (\_\_\_\_)

Is installation part of sales contract of used home? Yes (\_\_\_\_) No (\_\_\_\_) Not Applicable (\_\_\_\_)

The home has been installed in accordance with:

- (\_\_\_\_) 1. Manufacturer's Home Installation Instructions (provide page number or option \_\_\_\_\_).
- (\_\_\_\_) 2. State Generic Standards - Title 10 Texas Administrative Code (10 TAC) §§80.55, 56, 57, 58, and 59.
- (\_\_\_\_) 3. A stabilization system registered with the department in accordance with 10 TAC §80.62 - provide name of system or reference to MHD Approval Letter or registration \_\_\_\_\_.
- (\_\_\_\_) 4. A Special Foundation System (attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).

**IF NO METHOD IS CHECKED, IT WILL BE PRESUMED THAT OPTION 2  
(STATE GENERIC STANDARDS) WAS USED.**

To be submitted to the Department along with the required fee no later than the 15<sup>th</sup> day of the month after which the installation is completed. The Installation Report (Form T) should no longer be submitted with the title documents.

To be filed with the department within 30 days of original sale or within 10 days of a secondary move.

---

I verify that I am a licensed installer, that I am responsible for the installation described, and that the information supplied is true and correct.

---

Signature (Retailer/Installer)

---

Printed Name and Title

**DRAW MAP BELOW**



Figure: 10 TAC §80.260(a)(5)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MANUFACTURED HOUSING DIVISION  
507 SABINE, AUSTIN, TEXAS 78701  
P. O. BOX 12489 Austin, Texas 78711-2489  
(800) 500-7074, (512) 475-2200 FAX (512) 475-4706  
Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code  
Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

## Estimate for Reassigned Warranty Work

### Part I – Labor and Materials:

**For each item on the inspection report, provide the information requested.**

1) Description of proposed correction: \_\_\_\_\_

\_\_\_\_\_

Estimated time: \_\_\_\_\_ Hourly rate: \_\_\_\_\_

Itemized cost of materials: \_\_\_\_\_

\_\_\_\_\_

2) Description of proposed correction: \_\_\_\_\_

\_\_\_\_\_

Estimated time: \_\_\_\_\_ Hourly rate: \_\_\_\_\_

Itemized cost of materials: \_\_\_\_\_

\_\_\_\_\_

3) Description of proposed correction: \_\_\_\_\_

\_\_\_\_\_

Estimated time: \_\_\_\_\_ Hourly rate: \_\_\_\_\_

Itemized cost of materials: \_\_\_\_\_

\_\_\_\_\_



## Part II – Other Costs and Expenses

<b>Block 1: Travel</b>	
Starting location, which must be the closer of the nearest office to the site of the re-assigned warranty work or the in-state service center for the licensee.	
<b>Starting location:</b>	
Mileage is reimbursable at the greater of the rate of \$0.35 per mile, not to exceed \$75.00 per day, or the State of Texas approved rates from time to time in effect for reimbursement of state employees' travel expenses.	
<b>Estimated round-trip mileage:</b>	
<b>Itemized list of any other travel costs:</b>	
<b>Block 2: Lodging</b>	
Reimbursement for overnight lodging is to include the actual room rate and any applicable taxes but does not include any long distance telephone calls, entertainment, food, or beverages. Reimbursement may not exceed the State of Texas approved rates for reimbursement of state employees' lodging.	
<b>Name, location, and rate:</b>	
<b>Block 3: Meals</b>	
Reimbursement for meals (receipts are required) shall not exceed the greater of \$25.00 per day or the State of Texas approved rate for reimbursement of state employees' meals while traveling. Alcoholic beverages are not subject to reimbursement.	
<b>Estimated cost of meals:</b>	
<b>Block 4: Administrative and oversight costs</b>	
Administrative services may not exceed 20% of the total estimate. Provide an explanation of the necessary administrative services, including the number of hours required and the hourly rate of each person providing such services:	

## Part III – Certification

The undersigned represents that:

- (1) the actual costs for labor charged to the Texas Department of Housing and Community Affairs, Manufactured Housing Division and/or the Manufactured Homeowner's Recovery Trust Fund will not exceed the actual number of hours expended, rounded to the nearest quarter of an hour increment, times the hourly rate specified above;
- (2) the actual costs for materials charged to Texas Department of Housing and Community Affairs, Manufactured Housing Division and/or the Manufactured Homeowner's Recovery Trust Fund will not exceed the costs actually charged to the undersigned and such costs do not exceed the costs at which the undersigned is able to obtain such materials for its own account;
- (3) the hourly rate being charged by the undersigned does not exceed the normal hourly rate at which the specified individuals customarily provide their services; and
- (4) if the work to be performed involves any repair or alteration that would require DAPIA approval, such approval will be obtained and a copy of such approval, together with all DAPIA-approved drawings relating thereto, will be submitted when reimbursement is requested.

Name of Licensee: \_\_\_\_\_ This estimate submitted this \_\_\_\_ day of \_\_\_\_\_,

License number: \_\_\_\_\_

\_\_\_\_\_  
*Signature of licensee or duly authorized  
officer or representative*

\_\_\_\_\_  
*Printed name of licensee or duly authorized  
officer or representative*

Figure: 10 TAC §80.260(a)(6)

**Texas Department of Housing and Community Affairs**  
**MANUFACTURED HOUSING DIVISION**  
P. O. BOX 12489 Austin, Texas 78711-2489  
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109  
Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code  
Internet Address: www.tdhca.state.tx.us/mlv/index.htm

**APPLICATION FOR STATEMENT OF OWNERSHIP AND LOCATION**

Instructions: Submit this completed form (type or print clearly) with the required fee to the above address.

**BLOCK 1: Transaction Identification**

This application is for:

- ☐ First time issuance of an SOL for a new home (first retail sale)  
☐ Revised  
☐ Correction  
☐ Other

(For Department Use Only) Coding:

Lien on file: Y / N      Lienholder Code  
County Code:      Right of Surv.: Y / N  
Retailer #:      Manufacturer #:

**BLOCK 2: Home Information**

Manufacturer Name:		Model:	
Address:		Date of Manufacture:	
City, State, Zip:		Total Square Feet:	
License Number:		Wind Zone:	

	Label/Seal Number	Serial Number	Weight	Size*	
Section 1:				X	*NOTE: Size must be reported as the outside dimensions (length and width) of the home as measured to the nearest 1/2 foot at the base of the home, exclusive of the tongue or other towing device.
Section 2:				X	
Section 3:				X	
Section 4:				X	

**BLOCK 3: Home Location**

Was Home Moved? ☐ Yes ☐ No If yes, a paid taxes certificate from the county tax assessor for the county where the home was located on the preceding January 1.  
Was Home Installed? ☐ Yes ☐ No If yes, provide installer information below, if known

Installer Name:				
Address/City/State/ZIP:				
Installer Phone:		Installer Fax:		
Physical Location: (or 911 address)				
	Physical Address (cannot be a Rt. or P. O. Box)	City	State	ZIP      County

**BLOCK 4: Ownership Information**

IF ownership changed, date of transfer:

(4a) Seller(s) or Transferor(s)		(4b) Purchaser(s), Transferee(s), or Owner(s)	
Name	License # if Retailer:	Name	License # if Retailer:
Name		Name	
Mailing Address		Mailing Address	
City/State/Zip		City/State/Zip	
Daytime Phone Number (    ) -		Daytime Phone Number (    ) -	

**BLOCK 5: Right of Survivorship (if no box is checked, joint owners will NOT have right of survivorship)**

If joint owners desire right of survivorship, check the applicable box below:

- ☐ Husband and wife will be the only owners and agree that the ownership of the above described manufactured home shall, from this day forward, be held jointly and in the event of death, shall pass to the surviving owner.  
☐ Joint owners are other than husband and wife, desire right of survivorship, and have attached a completed Affidavit of Fact for Right of Survivorship or other affidavits as necessary to meet the requirements of §1201.213 of the Standards Act.

**BLOCK 6: Personal/Real Property Election - Purchaser(s)/Transferee(s)/Owner(s) check one election type:**

- ☐ Personal Property – Applicant elects to treat this home as personal property. All documents affecting title to the home will be filed in the records of the Department.
- ☐ Real Property – I (we) elect to treat this home as real property and certify that I am (we are) entitled to make this election in accordance with Section 1201.2055 of the Occupations Code because (one box must be checked):

☐ I (we) own the real property that the home is attached to.

☐ I (we) have a qualifying long-term lease for the land that the home is attached to.

I (We) understand that the home will not be considered to be real property until a certified copy of the SOL has been filed in the real property records of the county in which the home is located AND a copy stamped "Filed" has been submitted to the Department.

Legal description must be provided for real property: \_\_\_\_\_

- ☐ Inventory – Retailer number must be provided in Block 4b. (FOR RETAILER USE ONLY)

**BLOCK 7: Designated Use - to be designated by purchaser(s), transferee(s), or owner(s)**

☐ Residential Use (as a dwelling) OR

☐ Non-Residential - Check one of the following: ☐ Business Use ☐ Salvage

**BLOCK 8: Liens - Specify any liens (other than tax liens), charges, or other encumbrances to be recorded on the SOL**

Date of First Lien:		Date of Second Lien:	
Name of First Lienholder:		Name of Second Lienholder:	
Mailing Address:		Mailing Address:	
City/State/ZIP:		City/State/ZIP:	
Daytime Phone Number:	( ) -	Daytime Phone Number:	( ) -

**BLOCK 9: Special Mailing Instructions.**

IF a certified copy of an SOL is to be mailed to anyone other than the owner or lienholder of record (such as a closing agent), please provide that mailing address here and enclose the additional fee.

Name: \_\_\_\_\_  
 Company: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_

**BLOCK 10: Certification and Notarization - The statements set forth herein are made under oath and are true and correct.**

- ☐ Seller warrants that any required habitability warranty has been delivered (consumer to consumer sales are exempt).
- ☐ If the Statement of Ownership and Location is for a used home, seller warrants that the purchaser has been given a written disclosure on a form prescribed by the Department describing the condition of the home and of any appliances that are included in the home.
- ☐ Seller warrants that there are no tax liens against the home and that provisions have been made for all current year taxes owed on the home.

(10a) Each seller/transferor must sign, but notary signature and seal are optional.	(10b) Each purchaser/transferee or owner must sign, and notary signature and seal are required.
<p>_____  <i>Signature of seller/transferor</i></p> <p>Sworn and subscribed before me this ____ day of _____, 20 ____</p> <p>_____  <i>Signature of Notary</i></p> <p>SEAL</p>	<p>_____  <i>Signature of purchaser/transferee or owner</i></p> <p>Sworn and subscribed before me this ____ day of _____, 20 ____</p> <p>_____  <i>Signature of Notary</i></p> <p>SEAL</p>
<p>_____  <i>Signature of seller/transferor</i></p> <p>Sworn and subscribed before me this ____ day of _____, 20 ____</p> <p>_____  <i>Signature of Notary</i></p> <p>SEAL</p>	<p>_____  <i>Signature of purchaser/transferee or owner</i></p> <p>Sworn and subscribed before me this ____ day of _____, 20 ____</p> <p>_____  <i>Signature of Notary</i></p> <p>SEAL</p>

Figure: 10 TAC §80.260(a)(7)

Texas Department of Housing and Community Affairs  
**MANUFACTURED HOUSING DIVISION**  
P. O. BOX 12489 Austin, Texas 78711-2489  
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109  
Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code  
Internet Address: www.tdhca.state.tx.us/mh/index.htm

<b>RELEASE OR FORECLOSURE OF LIEN</b> <i>(Please type or print clearly.)</i>				
<b>FORM B</b>				
<b>BLOCK 1: Home Information (Must be completed)</b>				
Manufacturer Name:			License #:	
Manufacturer Address:				
Model :		Total Sq. Ft.:		Date of Manufacture:
Label/Seal Number	Complete Serial Number		Weight	Size
Section One:				
Section Two:				
Section Three:				
<b>BLOCK 2: For Release of Liens</b>				
<div style="display: flex; justify-content: space-between;"> <span>(Name of Lienholder)</span> <span>(Address)</span> <span>(City)</span> <span>(State)</span> <span>(Zip)</span> <span>(Phone)</span> </div>				
<div style="display: flex; justify-content: space-between;"> <span>(Name of Consumer)</span> <span>(Address)</span> <span>(City)</span> <span>(State)</span> <span>(Zip)</span> <span>(Phone)</span> </div>				
Release of Lien Effective Date:				
<b>BLOCK 3: For Foreclosure of Lien</b>				
Date of Repossession:		Release of Lien Effective Date:		
<b>Method of Repossession (MUST CHECK ONE):</b> <input type="checkbox"/> Terms of Security (Lien) Agreement <input type="checkbox"/> Judicial Order (Sequestration, Possessory Lien, etc.) If by judicial order, attach a copy of the Sheriff's <u>Bill of Sale</u> . If the lien was not recorded on the document of title, a <u>COPY</u> of the <u>Security Agreement</u> or <u>Judicial Order</u> must be attached.				
<b>BLOCK 4: Sale of Foreclosed Manufactured Home</b> <b><i>MUST be completed IF foreclosure is being recorded</i></b>				
<b>Method of Sale (MUST CHECK ONE):</b> <input type="checkbox"/> I (We) will sell the home to or through a licensed retailer. <input type="checkbox"/> I (We) will sell the home directly to a consumer and have the required retailer license. <input type="checkbox"/> I (We) will sell the home directly to a consumer and I am (We are) not required to be licensed as a retailer under Subchapter C of the Standards Act.  If either of the first two items above is checked and this form is submitted in conjunction with an application to record the sale of the manufactured home, the name and license number of the retailer must be provided here: R-_____.				
<b>BLOCK 5: Notarized Signature Required</b>				
I (We) certify that the statements set forth hereinabove and the information attached hereto are true and correct.   <div style="text-align: center;"> _____  (Signature of Person Authorized to Sign for Lienholder) </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="text-align: center;"> _____  (Title of Person Signing) </div> <div style="text-align: center;"> Seal  _____  (Phone) </div> </div>		Sworn and subscribed before me this _____ day of _____, 20_____ <div style="display: flex; justify-content: space-around; font-size: small;"> <span>(month)</span> <span>(year)</span> </div> <div style="text-align: center; margin-top: 10px;"> _____  (Signature of Notary) </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="text-align: center;"> _____  (Typed Name of Notary) </div> <div style="text-align: center;"> _____  (Date Commission Expires) </div> </div>		

Figure: 10 TAC §80.260(a)(8)

Texas Department of Housing and Community Affairs  
MANUFACTURED HOUSING DIVISION  
P. O. BOX 12489 Austin, Texas 78711-2489  
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109  
Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code  
Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

## QUICK PROCESSING

OF APPLICATION FOR STATEMENT OF OWNERSHIP AND LOCATION (SOL)

To receive Quick Processing, the application **MUST**:

- ☐ be complete,
- ☐ be clearly labeled for Quick Processing or have this coversheet attached to the front,
- ☐ be delivered in person or by overnight mail to address above, and
- ☐ be accompanied by full payment of all fees, including additional Quick Processing fee.

### BLOCK 1: Select Return Method

- ☐ To be picked up. Call \_\_\_\_\_ at (\_\_\_\_) \_\_\_\_ - \_\_\_\_ when ready.
- ☐ Return by regular mail
- ☐ Return using \_\_\_\_\_ overnight service. One of the following **MUST** be provided (**credit cards are NOT accepted**):
  - ☐ Requestor's overnight service account # \_\_\_\_\_
  - ☐ Pre-paid return airbill enclosed with the application

### BLOCK 2: Provide Address to Return Incomplete Applications to

Name:	
Company:	
Street Address:	
City, State, Zip:	

### BLOCK 3: Specify person to contact with questions about the application

Name:	
Phone Number:	(     )     -

Note: Quick Processing takes 3 business days from the date that the complete application is received in the Manufactured Housing Division (MHD) mailroom. Due to mail delivery and routing times, the date received by MHD may be later than the date it is received by TDHCA. Your certified copy of the SOL will be returned via **regular** mail unless a pre-paid return airbill or account number is provided.

Figure: 10 TAC §80.260(a)(9)

Texas Department of Housing and Community Affairs  
MANUFACTURED HOUSING DIVISION  
P. O. BOX 12489 Austin, Texas 78711-2489  
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109  
Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code  
Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

**FORM M**

(Please type or print clearly.)

**IMPORTANT NOTICE!**

**Place this form on top of the SOL application packet**

**This form is required when paying for multiple applications with one check, thereby enabling us to match refunds with applications.**

	HUD #, Seal #, or Serial #	Purchaser / Owner Name(s)	Fee(s) Per Home
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			
21.			
22.			
23.			
24.			
25.			
26.			

(Payor)

( )

(Phone Number)

( )

(Fax Number)

Total Fees: \$

(Check Number)

Figure: 10 TAC §80.260(a)(10)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489

(800) 500-7074, (512) 475-2200 FAX (512) 475-1109

Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code

Internet Address: www.tdhca.state.tx.us/mh/index.htm

<b>AFFIDAVIT OF FACT</b> <b>FOR RIGHT OF SURVIVORSHIP OWNERSHIP AGREEMENT</b>				
<b>BLOCK 1: Home Information (Must be completed)</b>				
Manufacturer Name:			License #:	
Manufacturer Address:			City/State/Zip:	
Model:	Total Sq. Ft.:	Date of Manufacture:		
Label/Seal Number	Complete Serial Number	Weight	Size	
Section One:				
Section Two:				
Section Three:				
<b>BLOCK 2: Type of Mutual Agreement</b>				
The relationship that exists between the undersigned can be defined as (check one): <input type="checkbox"/> Legally married (If this box is checked, complete Block 6 only) <input type="checkbox"/> Common Law marriage (If this box is checked, complete Block 3 and Block 6) <input type="checkbox"/> Co-owners are unmarried (If this box is checked, complete Block 4 and Block 6) <input type="checkbox"/> Co-owners are married but not to each other (If this box is checked, complete Block 5 and Block 6)				
<b>BLOCK 3: Attestation of Common Law Marriage</b>				
We, the undersigned, acknowledge and affirm that we are married by common law to each other and that any previous marriage(s) legal or common law, between any of the undersigned and other party(ies) was legally terminated by a spouse in death or by a legal divorce.				
Signature of Co-owner		Date	Signature of Co-owner	
<b>BLOCK 4: Attestation of Unmarried Status</b>				
I, the undersigned, acknowledge and affirm that I am not married, legally or by common law marriage.				
Signature of Co-owner		Date	Signature of Co-owner	
<b>BLOCK 5: Attestation of Separate Property By the Undersigned Spouse</b>				
<b>Spouse #1</b> In order to establish right of survivorship between the co-owners of said manufactured home, I, _____ the spouse of _____, do hereby acknowledge and attest that any and all property rights and interests in the above referenced manufactured home is the separate property of the co-owners exclusively. Signature of spouse #1: _____ Date: _____				
<b>Spouse #2</b> In order to establish right of survivorship between the co-owners of said manufactured home, I, _____ the spouse of _____, do hereby acknowledge and attest that any and all property rights and interests in the above referenced manufactured home is the separate property of the co-owners exclusively. Signature of spouse #2: _____ Date: _____				
<b>BLOCK 6: Signatures of Co-Owners</b> <b>NOTARIZATION REQUIRED</b>				
We, the undersigned, hereby agree that the ownership of the above described manufactured home shall, from this day forward, be held jointly and in the event of death, shall pass to the surviving owner(s).				
Signature of Co-owner		Date	Signature of Co-owner	
Before me personally appeared the person (s) whose signature (s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this ____ day of _____ 20____				
_____ (Notary Public)			_____ SEAL	
_____ (Commission Expires)			_____ Notary Public State of Texas	

Form: Affidavit of Fact for Right of Survivorship

Page 1

**Retailer/Broker Disclosure Statement**  
**Installation Responsibility on Purchase of Used Manufactured Home**  
*(Required per §80.121(a)(3)(C) of 10 TAC, Chapter 80)*

**Check Appropriate Boxes:**

- ☐ The purchase of your used manufactured home **INCLUDES** the installation; therefore the license holder **WILL** provide the required installation warranty.
- ☐ The purchase of your used manufactured home **DOES NOT** include the installation; therefore the license holder will **NOT** provide an installation warranty.
- ☐ The used manufactured home is already installed, and the retailer will do the following:
- ☐ Check Leveling
  - ☐ Check Vapor Retarder
  - ☐ Check Stabilization System
  - ☐ Other \_\_\_\_\_
  - ☐ None of the above
- ☐ The used manufactured home is already installed in a Wind Zone II county; however the home is a Wind Zone 1, which means this home was not designed or constructed to withstand a hurricane force wind occurring in a Wind Zone II or III area. If you have the home re-installed in another location, the home cannot be installed in a Wind Zone II area unless it was constructed before September 1, 1997, pursuant to §1201.256 of the Standards Act.

Each of us, by signing below, agree that we were given this disclosure on the date shown and it had been fully completed at the time it was given to us.

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By signing below, I confirm that I am the person licensed under the Texas Manufactured Housing Standards Act who provided this disclosure (including any attachments) to the consumers named above.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

License number: \_\_\_\_\_



Figure: 10 TAC §80.260(a)(12)

Texas Department of Housing and Community Affairs  
**MANUFACTURED HOUSING DIVISION**  
P. O. BOX 12489 Austin, Texas 78711-2489  
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109  
Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code  
Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

**WARRANTY AND DISCLOSURE  
FOR A USED MANUFACTURED HOME**

*If the manufactured home does not have a HUD Label or Texas Seal, a copy of this disclosure must be submitted to the Department along with an application for a Texas Seal and the required fee.*

<b>BLOCK 1: Home Information</b>					
Manufacturer Name:				Model:	
Address:				Date of Manufacture:	
City, State, Zip:				Total Square Feet:	
License Number:				Wind Zone:	
	<i>Label/Seal Number</i>	<i>Serial Number</i>	<i>Weight</i>	<i>Size*</i>	<b>* NOTE:</b> Size must be reported as the outside dimensions ( <u>length and width</u> ) of the home as measured to the nearest ½ foot at the base of the home, exclusive of the tongue or other towing device.
Section 1:				X	
Section 2:				X	
Section 3:				X	
Section 4:				X	
<b>BLOCK 2: Statement of Warranty</b> (This block does not apply to exempt consumer to consumer sales.)					
<p>The above-described home is warranted by the seller to the purchaser to be habitable and to remain habitable until the later of 60 days from the date of the purchase agreement selling or transferring the home or 60 days after the date that the installation of the home is completed at the site designated and agreed upon by the purchaser. By "habitable" it is meant that:</p> <ul style="list-style-type: none"> <li>There is no defect or deterioration in or damage to the home that creates a dangerous situation;</li> <li>The plumbing, heating, and electrical systems are in safe working order;</li> <li>The walls, floor, and roof are: <ul style="list-style-type: none"> <li>- free from a substantial opening that was not designed and</li> <li>- structurally sound; and</li> </ul> </li> <li>All exterior doors and windows are in place. Any window that is designated an egress window is in working order.</li> </ul> <p>The PURCHASER, _____, must notify the SELLER, _____,</p> <p style="text-align: center; font-size: small;">(name of purchaser) (name of seller)</p> <p><b>IN WRITING within 65 DAYS of any DEFECT that makes the home NOT HABITABLE or the SELLER will have NO LIABILITY for the warranty of habitability.</b></p>					

**BLOCK 3: Disclosure of Home And Appliance Condition****Rating scale:**

- E** *Excellent* – substantially the same condition as new  
**G** *Good* – obviously not new but still sound and fully serviceable with significant anticipated life or utility remaining  
**F** *Fair* – sound and serviceable but sufficiently used and will require replacement or significant repair in the near future  
**P** *Poor* – in need of imminent repairs; not sound and serviceable  
**U** *Unknown* – condition cannot be determined

**Appliances:** *Indicate the appliance being conveyed and rate its condition.**Any item checked and not assigned a rating is assumed to have no known defects.*

Check Appliances Conveyed with home	Make and Model	Gas or Electric	Rating (as listed above)
<input type="checkbox"/> Refrigerator			
<input type="checkbox"/> Range			
<input type="checkbox"/> Stove top only			
<input type="checkbox"/> Microwave			
<input type="checkbox"/> Washer			
<input type="checkbox"/> Dryer			
<input type="checkbox"/> Trash Compactor			
<input type="checkbox"/> Dishwasher			
<input type="checkbox"/> Other			

**Home:** *Rate each category below. Any item present but not assigned a rating is assumed to have no known defects.*

Interior	Rating (as listed above)	Comments
Living room:		
Kitchen:		
Bedroom 1		
Bedroom 2		
Bedroom 3		
Bathroom 1		
Bathroom 2		
Laundry/utility room:		
Other rooms (list):		
<b>General Home Exterior</b>	<b>Rating (as listed above)</b>	<b>Comments</b>
Roof decking		
Roof covering		
Floor underside		
Walls		
Other		
<b>Systems</b>	<b>Rating (as listed above)</b>	<b>Specify whether or not each system is operational</b>
Electrical system		
Water Heater		
Air Conditioner		
Plumbing system		

**BLOCK 4: Signatures***I certify that the above information is, to the best of my knowledge, complete and accurate.*

\_\_\_\_\_  
 (Seller's Signature) (Printed Name of Seller or Seller's authorized representative) (Date)

*I acknowledge receipt of the Warranty and Disclosure for the purchase of a used manufactured home.*

\_\_\_\_\_  
 (Consumer/Purchaser's Signature) (Printed Name of Consumer/Purchaser) (Date)

Figure: 10 TAC §80.260(a)(13)

**Texas Department of Housing and Community Affairs**  
**MANUFACTURED HOUSING DIVISION**  
P. O. BOX 12489 Austin, Texas 78711-2489  
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109  
Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code  
Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

**Continuous Manufactured Housing Surety Bond**

The State of \_\_\_\_\_ TDHCA license # (if known): \_\_\_\_\_  
County of \_\_\_\_\_  
I (we) \_\_\_\_\_ ,  
(Name of Owner, Partner, or Corporate Officer)  
to be licensed as a manufactured housing \_\_\_\_\_  
(Manufacturer, Retailer, Broker, Installer, Or Rebuilder)  
doing business as \_\_\_\_\_ / \_\_\_\_\_  
(Assumed or Corporate Name) (Trade Name of Location)  
at \_\_\_\_\_ / \_\_\_\_\_  
(Physical Street Address, City, State, Zip) (Mailing Address if Different)  
( ) \_\_\_\_\_ , as PRINCIPAL and \_\_\_\_\_  
(Telephone) (Surety)

as SURETY, duly authorized and qualified to do business as a surety company in this state, are firmly bound unto the special account referred to in the Texas Manufactured Housing Standards Act (the "Act"), Tex. Occ. Code, Chapter 1201, as the Texas Manufactured Homeowners' Recovery Trust Fund, in the sum of \$ \_\_\_\_\_, payable at Austin, Travis County, Texas for use by the Texas Department of Housing and Community Affairs to satisfy claims resulting from any cause of action directly related to the construction, re-building, sale, lease-purchase, exchange, brokerage, or installation of a manufactured home for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that the PRINCIPAL and all persons acting on behalf of said PRINCIPAL shall faithfully discharge all obligations, duties, and responsibilities under the Act as that statute is presently worded and as it may hereafter be amended to read, and all applicable rules and regulations of the Executive Director of the Texas Department of Housing and Community Affairs, Manufactured Housing Division adopted to carry out the provisions of said Act, subject, however, to the following terms and conditions:

- 1) It is agreed that as of \_\_\_\_\_, 20\_\_\_\_, this bond shall be in full force and effect and remain in effect until canceled by the surety.
- 2) This bond is valid when received by the Texas Department of Housing and Community Affairs, Manufactured Housing Division at its Austin office.
- 3) The bonding company must provide written notification to the Texas Department of Housing and Community Affairs, Manufactured Housing Division at least sixty (60) days prior to the cancellation of this bond.
- 4) This bond shall be open to successive claims up to the face value of the bond. The surety shall not be liable for successive claims in excess of the bond amount, regardless of the number of years the bond remains in force.
- 5) Although this bond is issued in fulfillment of the requirements of the Texas Department of Housing and Community Affairs, Manufactured Housing Division, this bond applies to all acts and omissions of the PRINCIPAL subject to the Act, the rules that implement the Act, and the orders of the Texas Department of Housing and Community Affairs, Manufactured Housing Division that implement or effectuate the Act, regardless of the site of any such act or omission.

IN WITNESS WHEREOF said PRINCIPAL and SURETY have executed this bond this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
to be effective on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Surety By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name)

Title: \_\_\_\_\_

Surety Company Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Street / P.O. Box \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

Phone #: ( ) \_\_\_\_\_ Fax #: ( ) \_\_\_\_\_

Signature of Owner, Partner, or Corporate Officer: \_\_\_\_\_ Title: \_\_\_\_\_

Bond Number: \_\_\_\_\_  
(For Surety Company's Use)

NOTE: The physical street address listed on this surety bond form must match the physical street address listed on the application.

**Figure: 10 TAC §80.260(a)(14)**

**Texas Department of Housing and Community Affairs**  
**MANUFACTURED HOUSING DIVISION**  
P. O. BOX 12489 Austin, Texas 78711-2489  
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109  
Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code  
Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

# TAX LIEN RECORD/RELEASE

*Please type or print clearly.*

## BLOCK 1: Required Information

**HUD Label or Texas Seal #:** \_\_\_\_\_ **OR** **Serial #:** \_\_\_\_\_  
**Year for which taxes are owed:** \_\_\_\_\_  
**Tax Roll Account #:** \_\_\_\_\_  
**Taxing Unit and ID #:** \_\_\_\_\_

**[ ] Check here if an electronic or paper list of liens is attached.**

## BLOCK 2: Optional Additional Information

***Providing more information will increase the accuracy of the lien recording process.***

<b>Collector's Name:</b>	<hr/>		
<b>Collector's Address:</b>	<hr/>		
	<i>(Address)</i>		
	<hr/>	<hr/>	<hr/>
	<i>(City)</i>	<i>(State)</i>	<i>(Zip Code)</i>
<b>Collector's Phone #:</b>	<hr/>		
	<i>( )</i>		
<b>Property Owner Name:</b>	<hr/>		
	<i>(Name)</i>		
<b>Property Owner Address:</b>	<hr/>		
	<i>(Address)</i>		
	<hr/>	<hr/>	<hr/>
	<i>(City)</i>	<i>(State)</i>	<i>(Zip Code)</i>

### **BLOCK 3: Signature Required for Tax Lien Recording**

I hereby certify that all liens being RECORDED with this form are in accordance with the provisions of §32.03 of the Tax Code.

\_\_\_\_\_  
(Collector's Signature) \_\_\_\_\_ (Date)

**BLOCK 4: Signature Required for Tax Lien Release**

I hereby certify that all liens being RELEASED with this form have been discharged and should be removed from the records of the Texas Department of Housing and Community Affairs.

\_\_\_\_\_  
(Collector's Signature) \_\_\_\_\_ (Date)

**Submit to the address or fax number at the top of this form.**

Figure: 10 TAC §80.260(a)(15)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489

(800) 500-7074, (512) 475-2200 FAX (512) 475-1109

Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code

Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

**Affidavit of Fact for Abandonment**

*(Sworn Statement)*

**BLOCK 1: Home Information**

Manufacturer: \_\_\_\_\_ Model: \_\_\_\_\_  
 Serial Number: \_\_\_\_\_ Label # and/or Seal #: \_\_\_\_\_  
 Square Footage: \_\_\_\_\_ Size: \_\_\_\_\_

**BLOCK 2: Statement of Facts**

I, \_\_\_\_\_, being first duly sworn, do hereby make this affidavit of fact and certify to the Texas Department of Housing and Community Affairs, Manufactured Housing Division (the "Department") as follows:

"I own the real property on which the manufactured home identified above is located. Such manufactured home has been continuously unoccupied for at least four (4) months. Any indebtedness secured by the manufactured home is delinquent. I have made reasonable efforts to locate and give notice to all owners and lienholders of record with the Department that I am seeking to acquire ownership of this manufactured home pursuant to Tex. Occ. Code, Section 1201.217, Manufactured Home Abandoned. The manufactured home has remained on the real property for at least forty-five (45) days after the date that each such notice was postmarked. As evidence that all notice requirements have been fulfilled and that I am entitled to a statement of ownership and location reflecting me as the owner of the manufactured home, I have attached a true and correct copy of each of the following documents:

- Each notice and the return receipt for certified mail that was sent to the following:
  - Each owner of the home at the address(es) on the statement of ownership and location records of the Department.
  - Each lienholder, including each holder of a recorded tax lien, on the statement of ownership and location records of the Department.
- Evidence that any indebtedness secured by the manufactured home is delinquent.

"I certify that my ownership of the above-described real property is duly recorded in the deed or real property records for the county where such property is located."

Further affiant saith not.

**BLOCK 3: Signatures *(Notarization is REQUIRED)***

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

Before me personally appeared the person(s) whose signature(s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

\_\_\_\_\_  
*(Name of Notary)*

\_\_\_\_\_  
*(Notary Public)*

\_\_\_\_\_  
*(Commission Expires)*

**SEAL**

*Notary Public State of Texas*

Figure: 10 TAC §80.260(a)(16)

## MANUFACTURER'S CERTIFICATE OF ORIGIN TO A MANUFACTURED HOME

THE UNDERSIGNED MANUFACTURER HEREBY CERTIFIES THAT THE NEW MANUFACTURED HOME DESCRIBED HEREIN, THE PROPERTY OF SAID MANUFACTURER, HAS BEEN TRANSFERRED ON THE DATE SET FORTH HEREIN, SUBJECT TO THE TERMS AND CONDITIONS OF THE INVOICE OR OTHER APPLICABLE AGREEMENT TO:

NAME OF RETAILER		REG. NO.		ADDRESS OF RETAILER		CITY		STATE		ZIP	
TRANSFER DATE	MODEL DESIGNATION			DATE OF MANUFACTURE			NUMBER OF SECTIONS		TOTAL SQUARE FEET		
LABEL/DECAL NUMBER	SERIAL NUMBER			WEIGHT			SIZE		EXCLUDING HITCH		
LABEL/DECAL NUMBER	SERIAL NUMBER			WEIGHT			SIZE		EXCLUDING HITCH		
LABEL/DECAL NUMBER	SERIAL NUMBER			WEIGHT			SIZE		EXCLUDING HITCH		
LABEL/DECAL NUMBER	SERIAL NUMBER			WEIGHT			SIZE		EXCLUDING HITCH		

FIRST ASSIGNMENT (For Retailers Only)				DATE			
TO:							
NAME OF RETAILER		REGISTRATION NO.		ENERGY ZONE _____		WIND ZONE _____	
ADDRESS				ROOF LOAD ZONE _____			
CITY		STATE		ZIP			
TYPE NAME AND TITLE OF PERSON AUTHORIZED TO SIGN FOR TRANSFERENCE TO RETAILER				THE MANUFACTURER WARRANTS THAT A GOOD AND MARKETABLE TITLE IS BEING TRANSFERRED AND THAT NO OTHER VALID MANUFACTURER'S CERTIFICATE OF ORIGIN IS ISSUED AND OUTSTANDING ON THE MANUFACTURED HOME DESCRIBED HEREIN.			
AUTHORIZED SIGNATURE				MANUFACTURER OF HOME			
				REGISTRATION NO.			
SECOND ASSIGNMENT (For Retailers Only)				ADDRESS OF MANUFACTURER			
TO:							
NAME OF RETAILER		REGISTRATION NO.		CITY		STATE	
ADDRESS				ZIP			
CITY		STATE		ZIP			
TYPE NAME AND TITLE OF PERSON AUTHORIZED TO SIGN FOR TRANSFERENCE TO RETAILER				AUTHORIZED SIGNATURE/TITLE			
AUTHORIZED SIGNATURE				INVOICE # _____			
<b>NOTE:</b> THIS MANUFACTURER'S CERTIFICATE OF ORIGIN MAY NOT BE ASSIGNED BY A RETAILER WHOSE NAME APPEARS HEREIN EXCEPT TO ANOTHER RETAILER LICENSED WITH THE TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS.							

## **Declaración de Divulgaciones para el Consumidor**

Al comprar una vivienda prefabricada, hay varias consideraciones importantes, incluyendo el precio, la calidad de construcción, las características, el plano de piso, y las alternativas para financiamiento. El Departamento de Vivienda y Desarrollo Urbano de EE.UU. (HUD) ayuda a proteger los consumidores a través de la regulación y ejecución de normas de HUD para el diseño y la construcción de viviendas prefabricadas. Las viviendas prefabricadas construidas de acuerdo con las normas de HUD se conocen como “HUD-code manufactured homes”.

El Departamento de Viviendas y Asuntos Comunitarios reglamenta los fabricantes, minoristas, agentes, vendedores, instaladores, y reconstructores de viviendas prefabricadas en Texas.

Si usted desea colocar una vivienda prefabricada en terreno que le pertenece o que comprará, usted debe considerar detalles como los siguientes:

**“RESTRICCIONES Y CONVENIOS RESTRICTIVOS”** Municipalidades o subdivisiones pueden restringir la colocación de viviendas prefabricadas en ciertos lotes, restringir su colocación a cierta distancia de linderos de propiedad, requerir que sean de cierto tamaño, y establecer ciertos requisitos para su tamaño y construcción. Puede que usted tenga que obtener permisos de construcción y aprobación de una asociación de propietarios antes de colocar una vivienda prefabricada en un lote en particular. Comuníquese con el gerente de la municipalidad, el condado, y la subdivisión local para determinar si la vivienda prefabricada que usted prefiere se puede colocar en un lote en particular.

**“AGUA”** Asegurase de que su lote tiene acceso al agua. Si tiene que perforar un pozo, comuníquese con varios perforadores para ofertas. Si agua está disponible a través de una municipalidad, un distrito de servicio público, un distrito de agua, o una cooperativa, usted debe preguntar sobre las tarifas que tendrá que pagar y los costos de ingresar con el sistema de agua.

**“ALCANTARILLA”** Si su lote no es servido por un sistema alcantarilla municipal o un distrito de servicio público, usted tendrá que instalar un sistema para aguas cloacales (conocido como una fosa séptica). Hay varias consideraciones o restricciones que determinarán si su lote es adecuado para soportar una fosa séptica. Para determinar los requisitos que se aplican a su lote y el costo de instalar tal sistema, comuníquese con el condado o un instalador privado que tiene licencia.

**“HONORARIOS PARA UNA ASOCIACION DE DUEÑOS”** Muchas subdivisiones tienen tasas y cuotas obligatorias que los propietarios de lotes tienen que pagar. Comuníquese con el gerente de la subdivisión donde está localizado su lote para determinar si hay honorarios asociados con su lote.

**“IMPUESTOS”** Su vivienda será evaluada y sujeto a impuestos “*al valorem*” igual que otras estructuras residenciales para una sola familia. Estos impuestos se tienen que poner en plica con su pago mensual las primas para seguridad, honorarios, u otros cobros en conexión con los préstamos asegurados por los bienes raíces residenciales, excepto que su prestamista no está obligado a imponer un requisito de plica en una transacción de bienes raíces que incluyen una

vivienda prefabricada si el prestamista es una institución financiera asegurada por el gobierno federal y de otros modos no requiere la plica de los impuestos. En el cierre, le notificarán de todas las divulgaciones requeridas por el gobierno federal para préstamos honestos.

**“ASEGURANZA”** Su prestamista puede requerir que usted obtenga aseguranza que satisface los requisitos del prestamista y que protege su inversión. Usted debe de pedir cotización del agente que usted prefiere para obtener aseguranza.

**“TIPOS DE HIPOTECAS DISPONIBLES”** La compra de una vivienda prefabricada se puede financiar con una hipoteca para bienes raíces o con una hipoteca prendaria. Una hipoteca para bienes raíces puede tener una tasa de interés mas baja que una hipoteca prendaria.

**“DERECHO A RESCINDIR”** Si usted adquiere una vivienda prefabricada, por medio de una compra, un intercambio, o un contrato para la compra tras arrendamiento, usted puede, hasta el TERCER DIA después de la fecha en que se firma el contrato pertinente, rescindir el contrato SIN PENA NI COBRO.

Esta **Divulgación** fue proveída por el minorista y/o el prestamista indicado abajo en esta fecha y me(nos) fue proveído antes de que completara(mos) una aplicación para crédito o antes de firmar un contrato para la compra de una vivienda prefabricada.

Nombre y # de licencia del minorista o prestamista      Fecha

Consumidor      Fecha

Dirección

Consumidor      Fecha

Ciudad    Condado    Estado    Código Postal

Dirección

Ciudad    Condado    Estado    Código Postal

**Antes de completar una aplicación para crédito, el minorista o su agente tiene que dar al consumidor esta declaración en texto tipográfico de por lo menos tamaño 12, y no puede estar adjunto con, ni incluido en, ninguna otra divulgación u otro documento.**



### **Statement of No Unpaid Taxes**

**Manufactured home HUD label number** \_\_\_\_\_,

**Texas Seal Number** \_\_\_\_\_, or

**Serial Number** \_\_\_\_\_

The undersigned Chief Appraiser for \_\_\_\_\_ County, Texas, or his/her duly authorized representative hereby certifies the following statements:

- The above-described manufactured home was located in the above-named county on January 1<sup>st</sup> of the prior year.
- There are no unpaid taxes for the prior year on the above-described manufactured home for which a lawful tax lien could be filed with the Texas Department of Housing and Community Affairs if such taxes were not paid.

\_\_\_\_\_  
Chief Appraiser for the above-named county  
Or his/her duly authorized representative

Date: \_\_\_\_\_

**This notice must be sent by certified mail, return receipt requested, to the owner of record of the manufactured home described below and each lien holder, including any holder of a tax lien, reflected in the official records of the Texas Department of Housing and Community Affairs, Manufactured Housing Division, as of the date that this notice is sent.**

**RE:** Manufactured Home with HUD label, Texas Seal and/or Serial Number(s)  
(the "Home")

---

---

---



---



---

---



---

**The above-referenced Home is on my real property located at \_\_\_\_\_ and appears to have been abandoned. It has been continuously unoccupied for at least four months, and the following indebtedness, secured by the Home, is delinquent (insert description of indebtedness including holder/payee):**

*(Signature of Sender)*

Figure: 34 TAC §29.12

Years of Service	Age at Date of Retirement					
	55	56	57	58	59	60
At least 20 but less than 21	90%	92%	94%	96%	98%	100%
At least 21 but less than 22	92%	94%	96%	98%	100%	100%
At least 22 but less than 23	94%	96%	98%	100%	100%	100%
At least 23 but less than 24	96%	98%	100%	100%	100%	100%
At least 24 but less than 25	98%	100%	100%	100%	100%	100%

Figure: 34 TAC Chapter 41--Preamble

TRS-Care Employer Surcharge Amounts--Return to Work Effective September 1, 2005

	Employer Surcharge TRS-Care 1	Employer Surcharge TRS-Care 2			Employer Surcharge TRS-Care 3		
		Years of Service			Years of Service		
		<20	20-29	30+	<20	20-29	30+
Retiree or Surviving Spouse Only							
With Part A&B of Medicare	\$23	\$135	\$145	\$155	\$162	\$172	\$182
With Part B of Medicare Only	\$82	\$180	\$190	\$200	\$263	\$278	\$293
Not Eligible for Medicare	\$148	\$460	\$470	\$480	\$488	\$503	\$518
Retiree and Spouse							
Both with Part A&B of Medicare	\$28	\$243	\$258	\$273	\$266	\$286	\$306
Both with Part B Only of Medicare	\$92	\$265	\$285	\$305	\$280	\$310	\$340
Neither Eligible for Medicare	\$163	\$638	\$658	\$678	\$621	\$651	\$681
Retiree with A&B/Spouse with B Only	\$29	\$221	\$241	\$261	\$180	\$205	\$230
Retiree with A&B/Spouse not Eligible for Medicare	\$30	\$313	\$333	\$353	\$295	\$320	\$345
Retiree with B Only/Spouse not Eligible for Medicare	\$98	\$357	\$377	\$397	\$396	\$426	\$456
Retiree with B Only/Spouse with A&B	\$87	\$288	\$303	\$318	\$367	\$392	\$417
Retiree not Eligible for Medicare/Spouse with A&B	\$150	\$568	\$583	\$598	\$592	\$617	\$642
Retiree not Eligible for Medicare/ Spouse with B Only	\$159	\$545	\$565	\$585	\$506	\$536	\$566
Retiree or Surviving Spouse and Child(ren)							
With Part A&B of Medicare	\$26	\$140	\$150	\$160	\$169	\$179	\$189
With Part B of Medicare Only	\$85	\$184	\$194	\$204	\$269	\$284	\$299
Not Eligible for Medicare	\$150	\$465	\$475	\$485	\$495	\$510	\$525
Retiree, Spouse and Child(ren)							
Retiree and Spouse with Medicare A&B	\$31	\$248	\$263	\$278	\$273	\$293	\$313
Retiree and Spouse with Medicare B Only	\$95	\$270	\$290	\$310	\$287	\$317	\$347
Retiree and Spouse not Eligible for Medicare	\$166	\$643	\$663	\$683	\$628	\$658	\$688
Retiree with A&B/Spouse with B Only	\$32	\$226	\$246	\$266	\$187	\$212	\$237
Retiree with A&B/Spouse not Eligible for Medicare	\$33	\$318	\$338	\$358	\$302	\$327	\$352
Retiree with B Only/Spouse not Eligible for Medicare	\$101	\$362	\$382	\$402	\$402	\$432	\$462
Retiree with B Only/Spouse with A&B	\$90	\$293	\$308	\$323	\$373	\$398	\$423
Retiree not Eligible for Medicare/Spouse with A&B	\$153	\$573	\$588	\$603	\$599	\$624	\$649
Retiree not Eligible for Medicare/ Spouse with B Only	\$161	\$550	\$570	\$590	\$512	\$542	\$572
Surviving Child Only							
	\$2	\$5	\$5	\$5	\$7	\$7	\$7

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas Department of Agriculture

### Cotton Administrative Penalty Matrix

The Texas Agriculture Code (the "Code") §12.020 confers administrative authority on the Texas Department of Agriculture (the department) to assess administrative penalties against any person who violates provisions of Chapter 74 of the Code or a rule adopted pursuant to Chapter 74. The department has implemented new and stricter enforcement procedures to increase the effectiveness of the cotton stalk destruction program and advance boll weevil eradication in the state. The department hereby amends the cotton administrative penalty matrix published in the August 22, 2003, issue of the *Texas Register* (28 TexReg 6973). These changes to the penalty matrix, which were developed from input by Cotton Producer Advisory Committees across the state: (1) make the penalty matrix consistent with 4 Texas Administrative Code (TAC) §20.22; and (2) eliminate the seven day grace period for producers who have received at least one Notice of Noncompliance (NNC) or warning letter and/or Notice of Violation (NOV) for having failed to comply with the applicable cotton stalk destruction deadline in any of the previous three years.

Four factors are to be considered when assessing administrative penalties: (1) the fruiting status of the cotton plants; (2) the number of days the field has been out of compliance; (3) the number of acres out of compliance; and (4) any efforts by the cotton producer to comply with the destruction deadline. These factors were developed in accordance with §12.020(d) of the Code and with consideration of the purpose and function of the cotton stalk destruction program. Since boll weevil and pink bollworm development occurs inside fruiting structures, the department considers a field that has cotton plants with fruiting structures to pose a greater hazard than does one with no fruiting structures. Additionally, the longer a field is left undestroyed and the more acres that are not in compliance, the greater the probability that boll weevils and pink bollworms will enter diapause. Diapausing insects represent a threat the following season, not only to cotton in the noncompliant field, but also to cotton in neighboring fields.

### COTTON PENALTY FORMULA

A penalty for failure to destroy cotton plants in accordance with the destruction requirements for the applicable zone by the appropriate destruction deadline will be calculated using the following formula: the penalty will consist of a base amount of \$250 plus an adjustable amount of \$0.50 per acre per day of noncompliance. Assessment of a penalty will not be mitigated by wet field conditions.

Calculation of the number of days a field is out of compliance will be based on the method of destruction required in 4 TAC §20.22 for the particular pest management zone (zone) and on the status of the cotton plants. For violations involving undestroyed standing stalks, days will be counted from the day following the destruction deadline; for volunteer cotton and regrowth, days will be counted beginning with the date of the first inspection when the field was found to be noncompliant.

If a field in any zone is brought into compliance within seven days of the date of notification by the department, no penalty will be assessed unless the producer has been issued a NNC or a warning letter, or a

NOV in any of the previous three years, in which case an unadjustable \$250 base penalty will be assessed for each field found to be noncompliant. To the extent that the cotton producer brings a portion of the total acreage into compliance after initial inspection, or if the cotton producer has applied a properly labeled herbicide to comply with destruction requirements, the department may reduce the adjustable portion of a penalty up to 50%.

The department may increase the adjustable portion of a penalty up to 50% if in any of the previous three years the operator/landowner has committed a violation that resulted in a penalty. The department also may make adjustments in the adjustable portion of a penalty based upon extenuating circumstances as justice may require.

This penalty matrix is effective immediately upon publication in the *Texas Register*.

TRD-200503221

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Filed: August 3, 2005

## Office of the Attorney General

### Agreed Final Judgment

The State of Texas gives notice of the proposed resolution of a cost recovery action in connection with the Baldwin Waste Oil Site in Robstown, Nueces County, Texas (the "Site"). Pursuant to Section 7.110 of the Texas Water Code, prior to presenting a settlement agreement to the Court for approval, the State is required to offer public an opportunity to comment in writing on the proposed settlement. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations that indicate that the settlement is inappropriate, improper, inadequate, or inconsistent with statutory requirements.

Case Title and Court: *SGS Control Services, Inc., Caleb Brett USA, Inc., and Saybolt Inc. v. Texas Natural Recourse Conservation Commission*, Cause No. GN000914, in the 353rd Judicial District Court, Travis County, Texas.

Nature of Suit: On February 29, 2000, the Texas Natural Recourse Conservation Commission ("Commission") issued the Order pursuant to the Texas Health & Safety Code §361.188 and §361.272 finding SGS Control Services, Inc., Caleb Brett USA, Inc., and Saybolt Inc. (collectively, the "Settling Parties") and others responsible for hazardous waste at the Baldwin Waste Oil Site. The Order required the Settling Parties and others to remediate the Site and to reimburse the Commission for its response costs. The Settling Parties and others appealed the Order. The Commission proceeded with the Site cleanup and sought to recover its response costs and attorney's fees. The Commission determined that the Settling Parties are de minimus parties, meaning that Settling Parties contributed only a very small amount of hazardous waste to the Site.

Proposed Agreed Judgment: The proposed partial agreed judgment awards the Commission \$52,500 in response costs and the Office of the Attorney General \$7,500 in attorney's fees for a total of \$60,000.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed by Albert M. Bronson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

*For information regarding this publication, contact A.G. Younger, Agency Liaison, at (512) 463-2110.*

TRD-200503191

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: August 1, 2005



### Agreed Final Judgment

The State of Texas gives notice of the proposed resolution of an enforcement action under the Texas Health & Safety and Water Codes against Safe Tire Corporation of Texas in connection with violations at Safe Tire's Cleveland, San Antonio, and Penwell waste tire storage facilities. Pursuant to Section 7.110 of the Texas Water Code, prior to presenting a settlement agreement to the Court for approval, the State is required to offer the public an opportunity to comment in writing on the proposed settlement. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations that indicate that the settlement is inappropriate, improper, inadequate, or inconsistent with statutory requirements.

Case Title and Court: *State of Texas v. Safe Tire Corporation of Texas, Cause No. GV2-03709, in the 250th Judicial District Court, Travis County, Texas.*

Nature of Suit: Safe Tire is a scrap tire processor and scrap tire storage facility operator that owns scrap tire processing and storage sites in Cleveland, San Antonio, and Penwell. Safe Tire's scrap tire processing registrations for the San Antonio, Cleveland, and Penwell facilities expired in 2000. Safe Tire failed to close the facilities as required by the TCEQ Scrap Tire rules. Safe Tire also violated other TCEQ scrap tire regulations related to maintaining the three sites.

Proposed Settlement: This settlement, memorialized in two agreed judgments, resolves violations at the Cleveland, San Antonio, and Penwell facilities by providing a schedule for the closure of the facilities and for the sale of the Cleveland facility to a third-party who will have primary responsibility for the Cleveland cleanup while preserving Safe Tire's ultimate liability in the event the cleanup of the Cleveland facility is not completed in accordance with the schedule contained in the judgment. The judgments award the State total civil penalties of \$780,800, deferred on the condition that Safe Tire strictly complies with the requirements of the judgment. The Office of the Attorney General will receive \$30,000 in attorney's fees.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed by Albert M. Bronson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin,

Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

*For information regarding this publication you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.*

TRD-200503206

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: August 2, 2005



## Texas Building and Procurement Commission

### Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of **Request for Proposals (RFP) #303-5-11359**. TBPC seeks a 3 year lease of approximately 2,326 square feet of office space in the Lampasas area, Lampasas County, Texas.

The deadline for questions is August 18, 2005, and the deadline for proposals is August 23, 2005 at 3:00 P.M. The award date is September 15, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the Electronic State Business Daily at [http://esbd.tbpc.state.tx.us/1380/bid\\_show.cfm?bidid=60356](http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=60356).

TRD-200503213

Kenneth Ming

Purchaser

Texas Building and Procurement Commission

Filed: August 3, 2005



## Central Texas Regional Mobility Authority

### Notice of Availability

The Central Texas Regional Mobility Authority (CTRMA), a political subdivision, is soliciting statements of interest and qualifications from firms interested in providing general systems consultant services. The firm will be responsible for providing the CTRMA with technical assistance and advice to ensure that the toll collection system for CTRMA-operated toll roads is delivered and operated by the toll systems integrator according to the Toll Systems Implementation and Maintenance Services Agreement, submitted system design documents, toll industry best practices, and applicable CTRMA standards. Firms submitting qualifications must be experienced in the development, management, and oversight of toll/revenue collection and accounting systems and transaction based processing systems.

A general systems consultant services qualifications packet will be available August 15, 2005. Copies may be obtained from the CTRMA website at [www.ctrma.org](http://www.ctrma.org), or by contacting the CTRMA Project Office at (512) 996-9778. Periodic updates, addenda, and clarifications will

be posted on the CTRMA website, and interested parties are responsible for monitoring the website accordingly. All firms intending to submit proposals must attend a scope of services meeting at the CTRMA Project Office, 13640 Briarwick Drive, Suite 200, Austin, TX 78729 at 1:30 p.m. C.D.S.T. August 30, 2005. Final responses must be received in the offices of the CTRMA by or before 4:00 p.m. C.D.S.T. September 15, 2005, to be eligible for consideration.

It is the policy of the CTRMA to encourage the participation of HUBs, minorities, and women in all facets of its activities. To this end, the extent to which HUBs, minorities, and women participate in the ownership, management, and professional work force of a firm will be considered by the CTRMA in the selection of a firm to provide general systems consultant services. Respondents shall submit a current profile of their firm and any relevant certifications with their responses to this RFQ.

Each firm will be evaluated based on the criteria and process set forth in the RFQ. The final selection of the general systems consultant services firm, if any, will be made by the CTRMA board of directors.

Questions concerning this RFQ may be submitted via e-mail to Ron Fagan at rfagan@ctrma.org or in writing to: Ron Fagan, c/o CTRMA, 13640 Briarwick Drive, Suite 200, Austin, TX 78729. All questions must be received by September 6, 2005.

TRD-200503229  
Mike Heiligenstein  
Executive Director  
Central Texas Regional Mobility Authority  
Filed: August 3, 2005

## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 22, 2005, through July 28, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on August 3, 2005. The public comment period for these projects will close at 5:00 p.m. on September 2, 2005.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Transtexas Gas Corporation;** Location: The project is located in Galveston Bay, State Track 89, approximately 5.5 miles southeast of Baytown, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Umbrella Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 320420; Northing: 3280544. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, flowlines, and pipelines. Permit No. 23851 is associated with the

proposed oil well. Permit No. 23851(01) is associated with the proposed pipeline. CCC Project No.: 05-0370-F1 and 05-0371-F1; Type of Application: U.S.A.C.E. permit application #23851 and #23851(01) are being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

**Applicant: Bolivar Terminal Company;** Location: The project is located along the Gulf Intracoastal Waterway on the Bolivar Peninsula, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Flake, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 333547; Northing: 3256292. Project Description: The applicant proposes to mechanically dredge a 100-foot-wide area adjacent to an existing 1,000-foot-long steel bulkhead; fill in the gaps behind the steel bulkhead and install a 1,000-foot-long, 20-foot-wide concrete riprap revetment along the length of the bulkhead. The proposed dredging is in the same area previously authorized but now would extend a total distance of 100 feet from the steel bulkhead further from shore and would be to a maximum project depth of 14 feet. The area where voids would be filled is in the upland areas immediately behind the existing steel bulkhead and therefore would not involve fill in waters of the U.S. Concrete boulders (approximately 15,000 cubic yards) measuring 2 feet to 4 feet in diameter, would be placed along the bulkhead at a 1:1 slope extending from the bottom of the dredged area (approximately 25 feet from shore) to the top of the existing bulkhead. A concrete cap would be placed on that portion of the riprap revetment extending above the waterline. The surface area of the concrete revetment would cover approximately 20,000 square feet or 0.46 acres. CCC Project No.: 05-0388-F1; Type of Application: U.S.A.C.E. permit application #13639(06) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200503215  
Larry L. Laine  
Chief Clerk/Deputy Land Commissioner, General Land Office  
Coastal Coordination Council  
Filed: August 3, 2005

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 08/08/05 - 08/14/05 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 08/08/05 - 08/14/05 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-200503190

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 1, 2005

## East Texas Council of Governments

Notice of Request for Proposals for Operation and Management of East Texas Workforce Centers

This Request for Proposals to interested entities is filed under Government Code 2254.

The East Texas Workforce Development Area is requesting proposals for the operation and management of its East Texas Workforce Centers for a period beginning July 1, 2006 and ending June 30, 2007, with the possibility for extending the subcontracts for a period of up to five additional years. Provision of these services will involve a cost reimbursement subcontract with the East Texas Council of Governments, which serves as the grant recipient and administrative unit for the East Texas Workforce Development Board and Chief Elected Officials Board of Directors.

The purpose of this Request for Proposals is to identify operators of One Stop Career Development Centers as outlined in Texas HB 1863 and the Workforce Investment Act of 1998, in the cities of Longview, Marshall, Palestine and Tyler. East Texas Workforce Center operators will also be responsible for maintaining and enhancing a network of satellite offices in the counties adjoining these cities. The proposer(s) awarded subcontracts will be responsible for operating the workforce centers and satellites, and for providing the program services of Workforce Investment Act (WIA), Temporary Assistance to Needy Families (TANF), Food Stamp Employment and Training (FSE&T), Trade Act, and Project RIO. The FY2006 estimate for funding is anticipated to be \$8,498,607 for all grants.

Persons or organizations wanting to receive a Request for Proposals (RFP) should request by letter, fax, or email. Requests should be addressed to Daniel Pippin, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662 or fax (903) 983-1440 or email Daniel.Pippin@twc.state.tx.us. The RFP is available as of July 29, 2005.

A bidders conference will be held on August 22, 2005 at 1:30 p.m. at the offices of the East Texas Council of Governments. It is anticipated that the deadline for receipt of proposals shall be October 6, 2005. Questions concerning the Request for Proposals process should be addressed to Wendell Holcombe, East Texas Council of Governments at (903) 984-8641.

TRD-200503183

Glynn Knight

Executive Director

East Texas Council of Governments

Filed: August 1, 2005

## Texas Education Agency

Request for Applications Concerning Open-Enrollment Charter Guidelines and Application

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-05-008 from eligible entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), or governmental entities. At least one member of the governing board of the group requesting the charter must attend one **REQUIRED APPLICANT CONFERENCE**. Conferences are scheduled for Tuesday, August 23, 2005; Friday, October 28, 2005; Friday, December 2, 2005; and Tuesday, January 10, 2006, in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701-1494. Failure to attend one of the conferences will disqualify an applicant from submitting an application for an open-enrollment charter.

**Description.** The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement governing the relationship between the charter school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade level(s) as provided by the charter. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

**Dates of Project.** Application receipt deadline for review is February 23, 2006. The completed application must be received by the TEA Document Control Center at 1701 N. Congress Avenue, Austin, Texas, 78701-1494, Room 6-108, on or before 5:00 p.m. Central Time on the deadline date.

**Project Amount.** TEC, §12.106(a), states that a charter holder is entitled to receive funding for the open-enrollment charter school under

Chapter 42 as if the school were a school district without a tier one local share for purposes of §42.253 and without any local revenue for purposes of §42.302. In determining funding for an open-enrollment charter school, adjustments under §§42.102, 42.103, 42.104, and 42.105 and the district enrichment tax rate under §42.302 are based on the average adjustment and average district enrichment tax rate for the state. TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the agency or the commissioner in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. An open-enrollment charter school may not charge tuition. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require a student to demonstrate artistic ability and may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or a discipline problem under TEC, Chapter 37, Subchapter A.

**Selection Criteria.** A complete description of selection criteria is included in the RFA.

The State Board of Education (SBOE) may approve open-enrollment charter schools as provided in TEC, §12.101 and §12.152. There are currently 199 charters approved under §12.101 and two charters approved under §12.152. There is a cap of 215 charters approved under TEC, §12.101, and no cap on the number of charters approved under TEC, §12.152.

The SBOE may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The SBOE will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The SBOE may also consider the history of the sponsoring entity and the credentials and background of its board members.

**Requesting the Application.** An application must be submitted under SBOE guidelines to be considered. A complete copy of the publication *Open-Enrollment Charter Guidelines and Application* (RFA #701-05-008), which includes an application and procedures, may be obtained by writing the Division of Charter Schools, Room 5-107, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas, 78701-1494, by calling (512) 463-9575, or at <http://www.tea.state.tx.us/charter/rfas/rfascharter.htm>.

**Further Information.** For clarifying information about the open-enrollment charter school application, contact Mary Perry, Division of Charter Schools, Texas Education Agency, at (512) 463-9575 or [mary.perry@tea.state.tx.us](mailto:mary.perry@tea.state.tx.us).

TRD-200503219

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: August 3, 2005



Request for Applications Concerning Public Senior  
College/University Open-Enrollment Charter Guidelines and  
Application

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-05-007 from eligible entities to operate open-enrollment charter schools. Eligible entities include Texas public senior colleges and universities.

**Description.** The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter offers flexibility and choice for educators, parents, and students. A public senior college or university open-enrollment charter school may operate on the campus of the public senior college or university or in the same county in which the campus of the public senior college or university is located.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade level(s) as provided by the charter. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

**Dates of Project.** Completed applications can be received by the TEA Document Control Center at 1701 N. Congress Avenue, Austin, Texas, 78701-1494, Room 6-108, at any time.

**Project Amount.** TEC, §12.106(a), states that a charter holder is entitled to receive funding for the open-enrollment charter school under Chapter 42 as if the school were a school district without a tier one local share for purposes of §42.253 and without any local revenue for purposes of §42.302. In determining funding for an open-enrollment charter school, adjustments under §§42.102, 42.103, 42.104, and 42.105 and the district enrichment tax rate under §42.302 are based on the average adjustment and average district enrichment tax rate for the state. TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the agency or the commissioner in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. An open-enrollment charter school may not charge tuition. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require a student to demonstrate artistic ability and may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or a discipline problem under TEC, Chapter 37, Subchapter A.



Selection Criteria. A complete description of selection criteria is included in the RFA.

The State Board of Education (SBOE) may approve open-enrollment charter schools as provided in TEC, §12.101 and §12.152. There is a cap of 215 charters approved under TEC, §12.101, and no cap on the number of charters approved under TEC, §12.152.

The SBOE will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school.

Requesting the Application. An application must be submitted under SBOE guidelines to be considered. A complete copy of the publication *Public Senior College/University Open-Enrollment Charter Guidelines and Application* (RFA #701-05-007), which includes an application and procedures, may be obtained by writing the Division of Charter Schools, Room 5-107, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas, 78701-1494, by calling (512) 463-9575, or at <http://www.tea.state.tx.us/charter/rfas/rfascharter.htm>.

Further Information. For clarifying information about the public senior college/university open-enrollment charter school application, contact Mary Perry, Division of Charter Schools, Texas Education Agency, at (512) 463-9575 or [mary.perry@tea.state.tx.us](mailto:mary.perry@tea.state.tx.us).

TRD-200503220

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: August 3, 2005

## ◆ ◆ ◆ **Employees Retirement System of Texas**

### **Consultant Contract Awards Announcement**

In compliance with the provisions of Texas Government Code, Chapter 2254, Subchapter B, including §2254.024(a)(6), the Employees Retirement System of Texas ("ERS") furnishes this notice of consultant contract awards. The consultant will provide ERS with an analysis and evaluation of its costs and cost drivers of providing healthcare benefits, its administration costs based on activities related to insurance, and its service levels compared to its peers. The consultant will also provide ERS with an analysis and evaluation of its costs and cost drivers of providing retirement benefits, its administration costs based on retirement-related activities, and its service levels compared to its peers.

The contracts are between ERS and Cost Effectiveness Measurement, Inc. ("CEM"), located at 350 Bay Street, Suite 800 Toronto, Ontario M5E 1M2. The cost for the healthcare study is \$25,000 and the cost for the retirement study is \$30,000. The contracts were fully executed on July 14, 2005, and terminate on March 15, 2006.

For further information, please call (512) 867-7179.

TRD-200503180

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Filed: August 1, 2005

## ◆ ◆ ◆ **Texas Commission on Environmental Quality**

### **Notice of District Petition**

Notices mailed July 29, 2005 through August 2, 2005

TCEQ Internal Control No. 06132005-D04; Hamilton Bee Cave, L.P. (Petitioner) filed a petition for creation of Belvedere Municipal Utility District of Travis County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, William L. Formby, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 443.69 acres located within Travis County, Texas; and (4) the proposed District is within Travis County, Texas, and no portion of land within the proposed District is within the extraterritorial jurisdiction of any city, town or village in Texas. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$5,332,000.

TCEQ Internal Control No. 04222005-D02; Castletop Capital Rutter, L.P. (Petitioner) filed a petition for creation of West Cypress Hills Water Control and Improvement District No. 1 of Travis County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Topfer Non-Exempt Marital Trust, on the property to be included in the proposed District; (3) the proposed District will contain approximately 610.868 acres located within Travis County, Texas; and (4) the proposed District is not within the corporate limits or extraterritorial jurisdiction of any city, town or village in Texas. The Petitioner has provided the TCEQ with a certificate evidencing the consent of Topfer Non-Exempt Marital Trust to the creation of the proposed District. The petition further states that the proposed District will: (1) design, construct, acquire, maintain and operate a waterworks and sanitary sewer system for domestic and commercial purposes; (2) design, construct, acquire, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; (4) design, construct, acquire, improve, maintain, and operate any additional facilities, systems, plants and enterprises consistent with the purposes for which the District is created; and (5) acquire, own, develop, construct, improve, manage, maintain and operate parks and recreational facilities. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$44,687,138.

TCEQ Internal Control No. 06132005-D03; Sugar Land Ranch Development L.L.C. and Hillsboro Estates L.L.C. (Petitioners) filed a petition for creation of Fort Bend County Municipal Utility District No. 126 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owner of a majority in value of the land to be included in the proposed District; (2) there are two lien holders, International Commercial Bank of China and SHK Pacific, Ltd., on the property to be included in the proposed District, and the Petitioners have provided the TCEQ with certificates evidencing their consent to the creation of the proposed District; (3) the proposed District will contain approximately 661.2 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Sugar Land, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 03-11, effective February 18, 2003, the City of Sugar Land, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. The Submitted creation application also request approval of a fire protection plan for the proposal District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$20,300,000.

#### INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public

Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687- 4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200503222

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 3, 2005

#### Notice of Public Hearings by the Texas Commission on Environmental Quality on Proposed Revisions to the State Implementation Plan

The Texas Commission on Environmental Quality (TCEQ) will conduct public hearings to receive testimony and written comment regarding proposed revisions to the state implementation plan (SIP) for redesignation of the El Paso carbon monoxide (CO) nonattainment area to attainment and to incorporate a plan for maintenance of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) in El Paso County as required by 40 Code of Federal Regulations §51.905(a)(3) of the United States Environmental Protection Agency regulations concerning SIPs.

The proposed CO redesignation revision incorporates a plan for the maintenance of the CO NAAQS in El Paso. The proposal will update the emissions inventory and provide motor vehicle emissions budget projections through 2015. The proposal includes discussion of data collection, modeling, monitoring, and technical analyses underlying the components of the redesignation request.

The proposed revision incorporating the ozone maintenance plan contains results of an updated attainment emissions inventory and technical analyses in support of the projections demonstrating maintenance of the 8-hour ozone standard through 2014; a discussion of monitoring data demonstrating attainment of the 1-hour and 8-hour ozone NAAQS; and a discussion of the contingency plan and possible control strategies.

Public hearings on these proposals will be held in El Paso, Texas, on September 1, 2005, at 2:00 p.m. and 6:00 p.m., at the TCEQ El Paso Regional Office, 401 E. Franklin Ave., Suite 560. The hearings are structured for the receipt of oral or written comments by interested persons. Both the 2:00 p.m. and 6:00 p.m. hearings will address both SIP revisions, and oral or written public comments regarding either revision will be accepted at both hearings. Commenters are requested to mark their written comments to identify the SIP revision to which the comments pertain. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during each hearing; however, TCEQ staff will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after each hearing.

Comments may be submitted to Erik Gribbin, Air Quality Planning and Implementation Division, TCEQ Chief Engineer's Office, MC 206, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-5687. All comments pertaining to the request for redesignation of the El Paso CO nonattainment area to attainment must be received by 5:00 p.m. on September 6, 2005, and should reference Project Number 2005-028-SIP-NR. All comments pertaining to the plan for maintenance of the 8-hour ozone NAAQS in El Paso County must be received by 5:00 p.m. on September 6, 2005, and should reference Project Number 2005-027-SIP-NR. For further information on the proposed revisions, please contact Erik Gribbin at (512) 239-2590. Copies of the

proposed SIP revisions can be obtained from the TCEQ Web site at: <http://www.tnrc.state.tx.us/oprd/sips/july2005ep.html>.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend one of the hearings should contact TCEQ at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200503106

Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 29, 2005



## Notice of Water Quality Applications

The following notices were issued during the period of July 27, 2005 through July 29, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF ADRIAN has applied for a renewal of Permit No. 12364-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day via surface irrigation of 8 acres of non-public access pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1.1 miles northwest of the intersection of Interstate Highway 40 and Farm-to-Market Road 290, 1 mile north of the City of Adrian adjacent to the Matador Ranch Road in Oldham County, Texas.

CITY OF ARCHER CITY has applied for a renewal of TPDES Permit No. 10393-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 165,000 gallons per day. The facility is located approximately 3/4 mile northeast of the intersection of State Highway 25 and State Highway 79 in Archer County, Texas.

BACLIFF MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. 10627-001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,030,000 gallons per day to an annual average flow not to exceed 1,240,000 gallons per day. The facility is located 1.5 miles north of the intersection of State Highway 146 and Farm-to-Market Road 517 and 0.8 mile east of State Highway 146, at the south boundary of the Bacliff Municipal Utility District in Galveston County, Texas.

BOLES CHILDREN'S HOME, INC. has applied for a renewal of Permit No. 13220-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 16,100 gallons per day via surface irrigation of 4.25 acres of non-public access grassland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 2,000 feet southeast of State Highway 34 and Farm-to-Market Road 2101 in Hunt County, Texas.

BROWNSVILLE PUBLIC UTILITIES BOARD (PUB) has applied for a renewal of TPDES Permit No. 10397-003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 12,800,000 gallons per day. The current permit authorizes the land application of sewage sludge at the Brownsville PUB Sludge

Only Landfill. The facility is located at 2800 East Avenue, north of the 2800 block of East Avenue, approximately 1/2 mile west of 30th Street in southeast Brownsville in Cameron County, Texas. The sludge disposal site is located on the northeast corner of the intersection of State Highways 511 and 802 and approximately 2.4 miles northeast of the Brownsville Airport in Cameron County.

CIRCLE BAR TRUCK CORRAL, INC. has applied for a renewal of Permit No. 14240-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 39,500 gallons per day via surface irrigation of 22 acres of non-public access land and evaporation from 3.3 acres of ponds. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located approximately 6.5 miles east of the City of Ozona at the intersection of Interstate Highway 10 and Taylor Box Road in Crockett County, Texas.

FLYING L PUBLIC UTILITY DISTRICT has applied for a renewal of Permit No. 11291-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 112,500 gallons per day via surface irrigation of 178 acres of public access golf course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located immediately west of Bottle Springs Road approximately 1.75 miles southeast of the intersection of Farm-to-Market Road 689 and Farm-to-Market Road 1077 in Bandera County, Texas. The facility and disposal site are located in the drainage basin of Medina River Above Medina Lake in Segment No. 1905 of the San Antonio River Basin.

CITY OF FORT STOCKTON has applied for a renewal of Permit No. 13651-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 347,000 gallons per day via surface irrigation of 215 acres within a city-owned tract of non-public access agriculture land cultivated with alfalfa. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located north of the Texas Department of Criminal Justice (TDCJ) Belding Prison west of State Highway 2037, approximately 1.65 miles northwest of the intersection of State Highway 2037 and Rural Route 3219, approximately 1.7 miles northwest of the City of Belding and approximately 17 miles southwest of the City of Fort Stockton in Pecos County, Texas.

CITY OF GATESVILLE has applied for a renewal of TPDES Permit No. 10176-004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility is located approximately 0.5 mile south of the intersection of U. S. Highway 84 and U. S. Business 36 in the City of Gatesville in Coryell County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 11 has applied for a renewal of TPDES Permit No. 11351-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 500 feet west of the intersection of Steubner-Airline Road and Aldine Western Road and south of and adjacent to Harris County Flood Control District Ditch P148-00-00 in Harris County, Texas.

CITY OF HOUSTON has applied for a major amendment to TPDES Permit No. 10495-079. The proposed amendment requests authorization to increase the two-hour peak flow from 14,805 gallons per minute (gpm) to 22,431 gallons per minute. The facility is located at 9610 Kingspoint Road, southwest of the southern terminus of Grenadier Drive, approximately 2,640 feet south of Fuqua Road in South Houston in Harris County, Texas.

J.A.C. INTERESTS, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No.

WQ0014585001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility will be located approximately 0.35 mile east-northeast of the intersection of Mason Road and Farm-to-Market Road 1093, south of Barker Reservoir in Harris County, Texas.

WARM SPRINGS REHABILITATION FOUNDATION, INC. has applied for a renewal of TPDES Permit No. 10943-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 1,000 feet south of the intersection of Farm-to-Market Road 1586 and Farm-to-Market Road 2091, at a point 2.0 miles west of U.S. Highway 183 in Gonzales County, Texas.

TRD-200503224

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 3, 2005



## Notice of Water Rights Application

Notices mailed July 28, 2005 through July 29, 2005

Proposed Temporary Permit No. TP-5890; Intercontinental Terminals Company, 1943 Battleground Road, Deer Park, Texas 77536, Applicant, seeks a Temporary Water Use Permit pursuant to Texas Water Code 11.138 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Applicant seeks authorization to divert and use up to 80 acre-feet of water at a maximum diversion rate of 3.34 cfs (1,500 gpm) for a period of three years from the Houston Ship Channel (also known as Buffalo Bayou), tributary of the San Jacinto River, San Jacinto River Basin, for industrial (hydrostatic testing of pipeline) purposes in Harris County, Texas. The diversion point will be located at Latitude 29.741 N and Longitude 95.098 W, 15 miles east of Harris, Harris County. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on March 18, 2005, and additional information was received on April 25, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on May 16, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by August 18, 2005.

Application No. 5897; Houston Fuel Oil Terminal Company, 16642 Jacintoport Blvd., Houston, Texas 77015, applicant, seeks a temporary Water Use Permit pursuant to Texas Water Code 11.138 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Houston Fuel Oil Terminal Company has applied for a temporary water use permit for authorization to divert and use 100 acre-feet of water within a three year period from Buffalo Bayou, San Jacinto River Basin, for industrial purposes (hydrostatic testing) in Harris County. Water will be diverted at a maximum rate of 5.5704 cfs (2,500 gpm) from a point located at 29.7495 N Latitude, 95.1024 W Longitude, being 15.5 miles east of the City of Houston and 2 miles south of the City of Channelview, Harris County. The temporary permit, if issued, will be junior in priority to all senior and superior water rights in the San Jacinto River Basin. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and fees were received on April 11, 2005 and additional information was received on May 16, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on June 28, 2005. Written public comments and requests for a public meeting should be submitted

to the Office of Chief Clerk, at the address provided in the information section below, by August 19, 2005.

## INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200503223

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 3, 2005



## Texas Public Finance Authority

### Request for Proposals for Underwriting Services

The Texas Public Finance Authority (the "Authority") is requesting proposals in order to select an underwriting pool for the 2006-07 fiscal biennium. The deadline for proposal submission is 2:00 p.m., September 1, 2005.

The Authority's Board of Directors (the "Board") will make its selection based upon demonstrated competence and qualifications. The Board's decisions on these matters is final. The Board reserves the right to reject any and all proposals.

Copies of the Request for Proposal may be obtained from the Authority's webpage at [www.tpfa.state.tx.us](http://www.tpfa.state.tx.us) or call Paula Hatfield, Texas Public Finance Authority, P.O. Box 12906, Austin, Texas 78711, (512) 463-5544.

TRD-200503193

Kimberly K. Edwards

Executive Director

Texas Public Finance Authority

Filed: August 1, 2005



## General Land Office

## Notice of Invitation for Offer for Renewal of Major Consulting Services

The General Land Office (GLO) is requesting offers for a consultant that will provide geological services related to coastal geology and near-shore processes. These services are necessary to fulfill Coastal Erosion Planning and Response Act (CEPRA) legislative requirements for project monitoring, development of reports, and advancement of related studies. Periodically, the GLO is required to provide an updated coastal erosion plan to the Texas State Legislature. Part of that plan includes the identification of shoreline change, migration, and the possible threat to existing structures on the Texas coast. A consultant is needed to ensure that such research and reports are performed in a timely manner and in accordance with statutory requirements.

Pursuant to §2254 of the TEX. GOV'T CODE, the GLO is requesting offers for consulting services relating to the study of coastal geology and other coastal processes for the coastal erosion program under the authority of CEPRA for a two-year period upon execution by both parties through August 31, 2007.

The consultant will develop technical reports and studies including, but not limited to, fieldwork, literature reviews, and data analysis. The consultant will be responsible for identifying, evaluating, and addressing, at a minimum, the following:

- Beach morphology, dune dynamics;
- Currents, sediment transport, interaction with structures;
- Protection and restoration methods of beaches, dunes, and bay shorelines;

- Design of shore protection projects and coastal structures;
- Inlet management planning;
- Sediment source identification/quantification; and
- Inter-governmental coordination; public outreach; consensus building.

It is the intent of GLO to award this contract to Ms. Kimberly K. McKenna, who has previously provided these consulting services for the GLO with respect to the CEPRA program. However, the GLO reserves the right to evaluate the qualifications and experience of any other Respondents, to reject any and/or all responses, and to negotiate specific terms of an agreement that is in the best interest of the state. The closing date for receipt of offers of these consulting services is 5:00 p.m. CDT, September 12, 2005. Further information may be obtained by contacting Thomas Durnin, General Land Office, 1700 N. Congress Avenue, Austin, TX, 78701-1495, phone (512) 463-1192.

TRD-200503218

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: August 3, 2005

## ◆ ◆ ◆ Department of State Health Services

Licensing Actions for Radioactive Materials

## LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

### NEW LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Big Spring	Manish Shroff MD	L05893	Big Spring	00	07/15/05
Houston	Truong Medical Center Inc	L05860	Houston	00	07/15/05
Houston	Beechnut Cardiology Associates LLP	L05906	Houston	00	07/25/05
Houston	Framo Engineering Houston Inc	L05867	Houston	00	07/26/05
Midland	DGM Services Inc DBA Longhorn Inspection	L05895	Midland	00	07/19/05
Plano	Plano Oncology Center LTD	L05874	Plano	00	07/19/05
Throughout Tx	R K Hall Construction LLC	L05912	Bryan	00	07/25/05
Throughout Tx	Russell T Gully DBA SKG Engineering	L05918	San Angelo	00	07/27/05

### AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Alvin	Innovene USA LLC DBA Innovene	L01422	Alvin	61	07/22/05
Alvin	Team Cooperheat-MQS Inc DBA Cooperheat-MQ	L00087	Alvin	129	07/22/05
Arlington	Dallas Cardiology Associates PA DBA Heart Place of Arlington	L05855	Arlington	01	07/18/05
Austin	Columbia St Davids Healthcare System LP DBA South Austin Hospital	L03273	Austin	59	07/21/05
Austin	HTI/ADC Venture DBA North Austin Medical Ctr	L04910	Austin	49	07/22/05
Beaumont	Lamar University	L04047	Beaumont	22	07/26/05
Big Spring	Big Spring Hospital Corporation DBA Scenic Mountain Medical Center	L00763	Big Spring	46	07/18/05
Bonham	Northeast Medical Center LP DBA Northeast Medical Center	L03331	Bonham	26	07/22/05
Carrollton	Medical Edge Healthcare Group PA DBA Heart First	L05555	Carrollton	04	07/18/05
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	84	07/26/05
Dallas	Doctors Hospital	L01366	Dallas	45	07/20/05
Deer Park	Total Petrochemicals USA Inc	L00302	Deer Park	45	07/26/05
El Paso	El Paso Healthcare System LTD DBA Las Palmas Medical Center	L02715	El Paso	63	07/14/05
Fort Worth	Precision Energy Services Inc	L00747	Fort Worth	70	07/28/05
Houston	Nuclear Imaging Services LLC	L05775	Houston	10	07/13/05
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	102	07/21/05
Houston	Cardiology of Houston	L05285	Houston	04	07/21/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	The Methodist Hospital	L00457	Houston	134	07/26/05
Houston	The University of Texas Health Science Center at Houston	L02774	Houston	47	07/22/05
Ingleside	E I Du Pont De Nemours & Company	L01753	Ingleside	36	07/19/05
Irving	Network Cancer Care of Denton	L05348	Irving	16	07/15/05
Kilgore	Laird Memorial Hospital DBA Laird Memorial Hospital	L03496	Kilgore	18	07/15/05
Longview	Good Shepherd Medical Center	L02411	Longview	71	07/21/05
Lubbock	Covenant Medical Center	L00483	Lubbock	129	07/15/05
Lubbock	Texas Tech University Health Sciences Ctr	L01869	Lubbock	76	07/20/05
Lubbock	Cardiologist of Lubbock PA	L05038	Lubbock	15	07/19/05
Lubbock	Covenant Medical Center	L00483	Lubbock	130	07/21/05
McAllen	Advanced Nuclear Imaging Inc	L05467	McAllen	06	07/19/05
Midland	Midland County Hospital District DBA Midland Memorial Hospital	L00728	Midland	76	07/19/05
Mineral Wells	Palo Pinto General Hospital	L01732	Mineral Wells	29	07/22/05
Odessa	Madhava Agusala MD PA	L05628	Odessa	02	07/22/05
Paris	Advanced Heart Care PA	L05290	Paris	11	07/15/05
Port Arthur	The Medical Center of Southeast Texas LP	L01707	Port Arthur	57	07/22/05
Richardson	Truglo Inc	L05519	Richardson	03	07/20/05
Round Rock	Thermo Measuretech	L03524	Round Rock	67	07/08/05
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	205	07/18/05
San Antonio	Methodist Healthcare System of San Antonio LTD DBA The Gamma Knife Center	L05076	San Antonio	15	07/18/05
San Antonio	Adult Cardiovascular Consultants PA	L05836	San Antonio	01	07/19/05
San Antonio	CTRRC Clinical Foundation	L01922	San Antonio	77	07/19/05
San Antonio	ACA SA LTD DBA Sendero Imaging and Treatment Center	L05567	San Antonio	09	07/21/05
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	206	07/21/05
Sulphur Springs	Medical Surgical Clinic of Sulphur Springs DBA Sulphur Springs Family Health Care Associates	L05701	Sulphur Springs	05	07/20/05
Texas City	Valero Refining Company	L02578	Texas City	28	07/21/05
Throughout Tx	Kooney X-ray Inc	L01074	Barker	98	07/28/05
Throughout Tx	Professional Service Industries Inc	L04940	Dallas	07	07/15/05
Throughout Tx	Alliance Engineering & Testing Services Inc	L05889	Fort Worth	01	07/18/05
Throughout Tx	H & G Inspection Company Inc ADBA Statewide Maintenance Company	L02181	Houston	200	07/28/05
Throughout Tx	Weatherford US LP	L02756	Houston	21	07/19/05
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	55	07/20/05
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	56	07/26/05
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	95	07/18/05
Throughout Tx	Isbell Engineering Group Inc	L05355	Sanger	10	07/26/05
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugar Land	126	07/28/05
Throughout Tx	Ludlum Measurements Inc	L01963	Sweetwater	71	07/20/05
Throughout Tx	APEX Geoscience Inc	L04929	Tyler	18	07/28/05

**RENEWAL OF LICENSES ISSUED:**

Location	Name	License #	City	Amendment #	Date of Action
Dallas	Cardiology Consultants of Texas	L04997	Dallas	32	07/18/05
Fort Worth	Consultants in Radiology PA	L05014	Fort Worth	15	07/22/05
Throughout Tx	The Dow Chemical Company Texas Operations	L00451	Freeport	77	07/21/05
Throughout Tx	Mas-Tek Engineering and Associates Inc	L04864	Longview	08	07/14/05
Wharton	Wharton Hospital Corporation DBA Gulf Coast Medical Center	L01388	Wharton	40	07/26/05

**TERMINATIONS OF LICENSES ISSUED:**

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Big Creek Construction LTD	L05657	Waco	01	07/15/05
Weimar	Colorado Fayette Medical Center	L03470	Weimar	15	07/22/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200503216  
Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: August 3, 2005

Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: August 3, 2005

**Notice of Agreed Order with Northstar Surgical Center**

On August 1, 2005, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and Northstar Surgical Center (registrant-R26257) of Lubbock. A total administrative penalty in the amount of \$5,000 was assessed the registrant for violations of 25 Texas Administrative Code, Chapter 289. Of the total administrative penalty, \$3,500 will be probated until January 1, 2007, and will be forgiven if the registrant complies with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200503217

**Houston-Galveston Area Council****Request for Proposal**

**(TRN 05-5552-01)**

H-GAC is seeking qualified consultants who have knowledge and expertise in transportation planning, economics, policy, data, and modeling. Successful candidates will work directly with the Texas Transportation Institute, the Texas Department of Transportation, the Governor's Business Council, and others as applicable in the development of a transportation transparency report, which tracks performance and spending for transportation agencies, and the development of a transportation economic assessment model, which will estimate the economic returns from transportation improvements.

A Pre-Proposal Conference is scheduled at **1 p.m. on Monday, August 15, 2005**, at H-GAC, 3555 Timmons Lane, Houston, Texas 77027, in Conference Room A on the second floor. Submittals are due by **noon on Thursday, September 1, 2005**. Twelve (12) typewritten, bound/stapled and signed copies of the proposal are required. Late proposals will **NOT** be accepted.



The Request for Proposal packet can be downloaded from the H-GAC Transportation Department Web site at [www.h-gac.com/transportation](http://www.h-gac.com/transportation). Interested firms may also obtain the packet at the H-GAC offices at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, or by contacting Jeff Kaufman at 832-681-2533. All questions regarding the Request for Proposals can be sent to the attention Jerry Bobo by email to [jerry.bobo@h-gac.com](mailto:jerry.bobo@h-gac.com), faxed to (713) 993-4508, or mailed to the Houston-Galveston Area Council, P.O. Box 22777, Houston, TX 77227-2777.

TRD-200503214  
Alan Clark  
MPO Director  
Houston-Galveston Area Council  
Filed: August 3, 2005

## Texas Department of Insurance

### Company Licensing

Application for incorporation to the State of Texas by AMERICAN ASSURANCE INSURANCE COMPANY, a Domestic Life, Accident and/or Health company. The home office is in Wimberley, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200503225  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: August 3, 2005

### Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2621 on September 8, 2005 at 10:00 a.m. in Room 100 of the William B. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider the Texas Windstorm Insurance Association's (Association) filing of proposed adjustments to the limits of liability for the Association's policies of windstorm and hail insurance.

This notice is made pursuant to the Texas Insurance Code, Art. 21.49 §8D (g) which requires notification and a hearing prior to the Commissioner's approval, disapproval, or modification of the Association's

proposed adjustments to the limits of liability for its policies of windstorm and hail insurance. This proceeding is exempt from the contested case procedures in Sections 40.002 and 40.003 of the Texas Insurance Code. For additional information interested parties may contact Philip O. Presley, Chief Actuary for Property and Casualty Insurance Lines, Texas Department of Insurance, 333 Guadalupe, Austin, Texas 78701 or call at (512) 475-3017.

TRD-200503211  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: August 2, 2005

## Texas Lottery Commission

### Instant Game Number 606 "Blackjack Doubler"

#### 1.0. Name and Style of Game.

A. The name of Instant Game Number 606 is "BLACKJACK DOUBLER." The play style is "beat score with doubler."

#### 1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 606 shall be \$1.00 per ticket.

#### 1.2. Definitions in Instant Game Number 606.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A, K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, 2, D SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100, and \$1,000.

D. Play Symbol Caption--The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 606 - 1.2D

PLAY SYMBOL	CAPTION
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
A	ACE
K	KNG
Q	QUN
J	JCK
10	TEN
9	NIN
8	EGT
7	SVN
6	SIX
5	FIV
4	FOR
3	THR
2	TWO
D SYMBOL	DBL
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$1,000	ONE THOU

E. Retailer Validation Code--Three letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three small letters are for validation

purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 606 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will

only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four digit Security Number placed randomly within the Serial Number. The remaining nine digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game.

The format will be: 0000000000000.

G. Low-Tier Prize--A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize--A prize of \$40.00 or \$100.

I. High-Tier Prize--A prize of \$1,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (606), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 606-0000001-001.

L. Pack--A pack of "BLACKJACK DOUBLER" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five. Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "BLACKJACK DOUBLER" Instant Game Number 606 ticket.

2.0. Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BLACKJACK DOUBLER" Instant Game is determined once the latex on the ticket is scratched off to expose 13 Play Symbols. The player must add cards in each Hand. If the total of any HAND beats the DEALER'S total, the player wins prize shown for that HAND. If a player reveals a "D" play symbol the player wins double the prize shown for that HAND. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1. Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 13 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 13 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 13 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 13 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2. Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. No duplicate non-winning hands on a ticket.
- C. No duplicate non-winning prize symbols on a ticket.
- D. A non-winning prize symbol will never be the same as a winning prize symbol.
- E. The doubler play symbol will only appear as dictated by the prize structure.
- F. The total in each player's hand will range from 16 to 21 inclusive.

### 2.3. Procedure for Claiming Prizes.

A. To claim a "BLACKJACK DOUBLER" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$40.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BLACKJACK DOUBLER" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BLACKJACK DOUBLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

- 1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
- 2. delinquent in making child support payments administered or collected by the Attorney General; or
- 3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

- 4. in default on a loan made under Chapter 52, Education Code; or
- 5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BLACKJACK DOUBLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6. If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BLACKJACK DOUBLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8. Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 13,200,000 tickets in the Instant Game Number 606. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 606 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,531,200	8.62
\$2	633,600	20.83
\$4	369,600	35.71
\$5	105,600	125.00
\$10	52,800	250.00
\$20	52,800	250.00
\$40	26,400	500.00
\$100	2,530	5,217.39
\$1,000	220	60,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0. End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game Number 606 without advance notice, at which point no further tickets in that game may be sold.

6.0. Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game Number 606, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200503107  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: July 29, 2005



Instant Game Number 607 "Lucky 5's"

1.0. Name and Style of Game.

A. The name of Instant Game Number 607 is "LUCKY 5'S." The play style is "key symbol match with tripler."

1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 607 shall be \$5.00 per ticket.

1.2. Definitions in Instant Game Number 607.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, STAR SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$1,000, \$5,000 or \$55,000.

D. Play Symbol Caption--The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 607 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5 SYMBOL	FIV
6	SIX
7	SVN
8	EGT
9	NIN
STAR SYMBOL	STR
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$5,000	FIV THOU
\$55,000	55 THOU

E. Retailer Validation Code--Three letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three small letters are for validation

purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 607 - 1.2E

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four digit Security Number placed randomly within the Serial Number. The remaining nine digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game.

The format will be: 0000000000000.

G. Low-Tier Prize--A prize of \$5.00, \$10.00, \$15.00, or \$20.00.

H. Mid-Tier Prize--A prize of \$50.00, \$100 or \$500.

I. High-Tier Prize--A prize of \$5,000 or \$55,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (607), a seven digit pack number, and a three digit ticket

number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 607-0000001-001.

L. Pack--A pack of "LUCKY 5'S" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one. The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "LUCKY 5'S" Instant Game Number 607 ticket.

2.0. Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LUCKY 5'S" Instant Game is determined once the latex on the ticket is scratched off to expose 80 Play Symbols. If a player reveals a "5" play symbol within a game, the player wins prize indicated for that game. If a player reveals three "5" play symbols within a game the player wins TRIPLE the prize indicated for that game. If a player reveals a star play symbol the player instantly wins all 20 prizes shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1. Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 80 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 80 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 80 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 80 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2. Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than four like non-winning prize symbols on a ticket.

C. A non-winning prize symbol will never be the same as a winning prize symbol.

D. The win all symbol will only appear on intended winners as dictated by the prize structure.

E. No duplicate non winning games in the same order on a ticket.

F. No occurrence of three like play symbols in a game with the exception of the 5 play symbol used in accordance with the prize structure.

#### 2.3. Procedure for Claiming Prizes.

A. To claim a "LUCKY 5'S" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In

the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY 5'S" Instant Game prize of \$5,000 or \$55,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY 5'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "LUCKY 5'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6. If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "LUCKY 5'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8. Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game Number 607. The approximate number and value of prizes in the game are as follows:



Figure 3: GAME NO. 607 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	806,400	6.25
\$10	336,000	15.00
\$15	134,400	37.50
\$20	84,000	60.00
\$50	67,200	75.00
\$100	13,776	365.85
\$500	1,428	3,529.41
\$5,000	42	120,000.00
\$55,000	7	720,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.49. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0. End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game Number 607 without advance notice, at which point no further tickets in that game may be sold.

6.0. Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game Number 607, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200503108

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: July 29, 2005



Instant Game Number 614 "Holiday Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 614 is "HOLIDAY CASH". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 614 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 614.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, MONEY BAG SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100 or \$1,000.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 614 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
MONEY BAG SYMBOL	WIN
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 614 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$25.00, \$50.00, or \$100.

I. High-Tier Prize- A prize of \$1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (614), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 614-0000001-001.

L. Pack - A pack of "HOLIDAY CASH" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOLIDAY CASH" Instant Game No. 614 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "HOLIDAY CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol the player wins prize indicated for that number. If a player reveals a moneybag play symbol the player wins \$25.00 automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the

Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non winning Your Numbers on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

E. The moneybag play symbol will only appear on intended winning tickets as dictated by the prize structure.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "HOLIDAY CASH" Instant Game prize of \$1.00, \$2.00, 4.00, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$25.00, \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOLIDAY CASH" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOLIDAY CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "HOLIDAY CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "HOLIDAY CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

#### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 614. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 614 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,392,000	8.62
\$2	528,000	22.73
\$4	336,000	35.71
\$5	96,000	125.00
\$10	72,000	166.67
\$20	36,000	333.33
\$25	24,000	500.00
\$50	10,850	1,105.99
\$100	1,450	8,275.86
\$1,000	200	60,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.81. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 614 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 614, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200503109  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: July 29, 2005



Instant Game Number 616 "Sleigh Ride Riches"

1.0 Name and Style of Game.

A. The name of Instant Game No. 616 is "SLEIGH RIDE RICHES". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 616 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 616.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, SNOWFLAKE SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200, \$2,000 and \$25,000.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 616 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
SNOWFLAKE SYMBOL	DBLE
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$2,000	TWO THOU
\$25,000	25 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

**Figure 2: GAME NO. 616 - 1.2E**

<b>CODE</b>	<b>PRIZE</b>
<b>TWO</b>	<b>\$2.00</b>
<b>FOR</b>	<b>\$4.00</b>
<b>FIV</b>	<b>\$5.00</b>
<b>TEN</b>	<b>\$10.00</b>
<b>TWN</b>	<b>\$20.00</b>

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$70.00 or \$100.

I. High-Tier Prize- A prize of \$2,000 or \$25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (616), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 616-0000001-001.

L. Pack - A pack of "SLEIGH RIDE RICHES" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in a A- B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SLEIGH RIDE RICHES" Instant Game No. 616 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SLEIGH RIDE RICHES" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR PACK-AGE NUMBERS play symbols to either of the SLEIGH NUMBERS

play symbols the player wins prize indicated for that number. If a player reveals a snowflake play symbol the player wins DOUBLE the prize indicated. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Package Numbers play symbols on a ticket.

C. No duplicate Sleigh Number play symbols on a ticket.

D. The doubler symbol will only appear on intended winning tickets as dictated by the prize structure.

E. The doubler symbol will never appear more than once on a ticket.

F. No prize amount in a non-winning spot will correspond with the Your Package Number play symbol (i.e. 5 and \$5).

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "SLEIGH RIDE RICHES" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$70.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$70.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SLEIGH RIDE RICHES" Instant Game prize of \$2,000 or \$25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by

the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SLEIGH RIDE RICHES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "SLEIGH RIDE RICHES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "SLEIGH RIDE RICHES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or



within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose

signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,000,000 tickets in the Instant Game No. 616. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 616 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	864,000	10.42
\$4	720,000	12.50
\$5	144,000	62.50
\$10	90,000	100.00
\$20	90,000	100.00
\$50	36,000	250.00
\$70	16,875	533.33
\$100	3,375	2,666.67
\$2,000	38	236,842.11
\$25,000	11	818,181.82

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.58. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 616 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 616, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200503110  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: July 29, 2005



### Instant Game Number 617 "Winter Treasures"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 617 is "WINTER TREASURES". The play style is "key symbol match with multiplier".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 617 shall be \$10.00 per ticket.

#### 1.2 Definitions in Instant Game No. 617.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: GIFT SYMBOL, MITTENS SYMBOL, EAR MUFF SYMBOL, JINGLE BELL

SYMBOL, CAP SYMBOL, DRUM SYMBOL, SACK SYMBOL, SNOW FLAKE SYMBOL, CANDLE SYMBOL, CHRISTMAS TREE SYMBOL, BELL SYMBOL, HOLLY SYMBOL, SNOWMAN SYMBOL, BALL SYMBOL, ANGEL SYMBOL, CANE SYMBOL, CAMP FIRE SYMBOL, COOKIE SYMBOL, CHRISTMAS LIGHTS SYMBOL, STAR SYMBOL, WREATH SYMBOL, HORN SYMBOL, STOCKING SYMBOL, DEER SYMBOL, SLEIGH SYMBOL, 2X SYMBOL, 25X SYMBOL, \$1.00, \$2.00, \$5.00,

\$10.00, \$15.00, \$20.00, \$25.00, \$30.00, \$50.00, \$100, \$500, \$1,000, \$10,000, \$20,000, and \$500,000.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 617 - 1.2D

PLAY SYMBOL	CAPTION
GIFT SYMBOL	GIFT
MITTENS SYMBOL	MTTNS
EAR MUFF SYMBOL	MUFFS
JINGLE BELL SYMBOL	JINGLE
CAP SYMBOL	CAP
DRUM SYMBOL	DRUM
SACK SYMBOL	SACK
SNOW FLAKE SYMBOL	FLAKE
CANDLE SYMBOL	CANDLE
CHRISTMAS TREE SYMBOL	TREE
BELL SYMBOL	BELL
HOLLY SYMBOL	HOLLY
SNOWMAN SYMBOL	SNWMN
BALL SYMBOL	BALL
ANGEL SYMBOL	ANGEL
CANE SYMBOL	CANE
CAMP FIRE SYMBOL	FIRE
COOKIE SYMBOL	COOKIE
CHRISTMAS LIGHTS SYMBOL	LIGHT
STAR SYMBOL	STAR
WREATH SYMBOL	WREATH
HORN SYMBOL	HORN
STOCKING SYMBOL	STCKNG
DEER SYMBOL	DEER
SLEIGH SYMBOL	SLEIGH
2X SYMBOL	2TIMES
25X SYMBOL	25TIMES
\$1.00	ONE\$
\$2.00	TWO\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTEEN
\$20.00	TWENTY
\$25.00	TWY FIV
\$30.00	THIRTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$10,000	10 THOU
\$20,000	20 THOU
\$500,000	500 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

**Figure 2: GAME NO. 617 - 1.2E**

<b>CODE</b>	<b>PRIZE</b>
<b>TEN</b>	<b>\$10.00</b>
<b>FTN</b>	<b>\$15.00</b>
<b>TWN</b>	<b>\$20.00</b>

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$25.00, \$30.00, \$50.00, \$100 or \$500.

I. High-Tier Prize- A prize of \$1,000, \$2,500, \$10,000, \$20,000 or \$500,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (617), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 617-0000001-001.

L. Pack - A pack of "WINTER TREASURES" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket front 001 on the other side.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WINTER TREASURES" Instant Game No. 617 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WINTER TREASURES" Instant Game is determined once the latex on the ticket is scratched off to expose 75 (seventy-five) Play Symbols. A player must scratch to reveal 25 games. If a player reveals 2 (two) matching symbols within the same game the

player wins prize indicated for that game. If a player reveals a "2X" play symbol the player wins double the amount indicated for that game. If a player reveals s "25X" play symbol the player wins 25 times the amount indicated for that game. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 75 (seventy-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 75 (seventy-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 75 (seventy-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 75 (seventy-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning games in any order on any ticket.

C. The "2X" play symbol is an instant win, winning DOUBLE the prize shown for that game, not requiring a match, and will appear once and only once in intended winning games in accordance with the prize structure.

D. The "25X" play symbol is an instant win, winning 25 times the prize shown for that game, not requiring a match, and will appear once and only once on intended winners in accordance with the prize structure.

E. Non-winning prize symbols will never be the same as the winning prize symbol(s).

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "WINTER TREASURES" Instant Game prize of \$10.00, \$15.00, \$20.00, \$25.00, \$30.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$25.00, \$30.00, \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WINTER TREASURES" Instant Game prize of \$1,000, \$2,500, \$10,000, \$20,000 or \$500,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WINTER TREASURES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "WINTER TREASURES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "WINTER TREASURES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed

on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 617. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 617 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	525,000	5.71
\$15	210,000	14.29
\$20	60,000	50.00
\$25	60,000	50.00
\$30	60,000	50.00
\$50	60,000	50.00
\$100	6,500	461.54
\$500	2,000	1,500.00
\$1,000	625	4,800.00
\$2,500	150	20,000.00
\$10,000	75	40,000.00
\$20,000	10	300,000.00
\$500,000	3	1,000,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.05. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 617 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 617, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200503111

Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: July 29, 2005

## Manufactured Housing Division

### Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") at 9:00 a.m. on Monday, September 12, 2005 at 507 Sabine Street, 4th Floor Boardroom, Austin, Texas 78701. The public hearing is to accept comments on new and amended proposed rules to Title 10 Texas Administrative

Code, Chapter 80 (West) ("Rules"). The proposed rules are published in the August 12, 2005 issue of the *Texas Register*.

All interested parties are invited to attend such public hearing to express their views with respect to the proposed amendments to the manufactured housing rules. Questions or requests for additional information may be directed to Sharon S. Choate at the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, 507 Sabine Street, 10th Floor, Austin, Texas 78701, telephone (512) 475-2206, or email at sharon.choate@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Sharon S. Choate in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their comments in writing to Sharon S. Choate prior to the date scheduled for the hearing. Written comments may be sent to the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489, faxed to (512) 475-4250, or emailed to sharon.choate@tdhca.state.tx.us.

This notice is published and the above described hearing is to be held in satisfaction of the requirements of the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201 and Title 10 Texas Administrative Code (West).

Individuals who require auxiliary aids for this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1 (800) 735-2989 at least two days prior to the meeting so that appropriate arrangements can be made.

TRD-200503149

Timothy K. Irvine

Executive Director

Manufactured Housing Division

Filed: August 1, 2005

## **Texas Parks and Wildlife Department**

### **Notice of Availability and Request for Public Comment**

Draft Natural Resource Restoration Plan, Environmental Assessment, and Coastal Management Plan Consistency Determination

AGENCIES: Texas Parks and Wildlife Department (TPWD), Texas Commission on Environmental Quality (TCEQ), Texas General Land Office (GLO) and the United States Fish and Wildlife Service (USFWS) (hereafter, Natural Resource Trustees).

ACTION: Notice of availability of a Draft Restoration Plan/Environmental Assessment (Draft RP/EA) and the Federal Consistency Determination for the Draft RP/EA under the Texas Coastal Management Program (CMP) and of a thirty- (30) day public comment period beginning the date of publication of this notice.

SUMMARY: Notice is hereby given that the Draft RP/EA for natural resource injuries and ecological service losses associated with the October 20, 1994 pipeline discharges into the San Jacinto River and upper Galveston Bay (Incident) and the Federal Consistency Determination with the CMP related to the activities outlined in the Draft RP/EA are available for public review and comment.

The Draft RP/EA has been prepared by the Natural Resource Trustees to address natural resource service losses resulting from the Incident. The Draft RP/EA presents the injury assessment that was the basis of the previously noticed and finalized Consent Decree for the Incident. This Consent Decree provided the terms of a settlement of claims of the United States and the State of Texas against Equilon Pipeline Company (Equilon), Texaco Pipeline, Inc. (Texaco) and Colonial Pipeline

Company (Colonial) for natural resource damages in connection with the rupture of Colonial and Texaco pipelines and the discharge of oil products in the vicinity of the San Jacinto River. The settlement provided for the purchase and preservation of a specific 101.9 acre tract of land adjacent to the Sheldon Lake State Park comprised of mixed forest habitat, payment of a \$30,000 endowment for the management of the mixed forest habitat preservation and the payment of \$245,000 to be used for the construction of a minimum of 8.2 acres of estuarine wetlands and 0.9 acres of freshwater wetlands. The Draft RP/EA provides the Natural Resource Trustees proposed plan to allocate monies recovered as part of that settlement for the restoration of ecological resources and services. The Draft RP/EA calls for the use of the monies recovered for natural resource injuries plus interest thereon since settlement to: 1) entirely fund a proposal from the Baytown Nature Center for the expansion of constructed wetlands; 2) partially fund a proposal from the Texas Coastal Watershed Program for the restoration of freshwater intertidal urban wetlands on public property along Sims, Brays and Buffalo Bayous in Harris County; as well as, 3) partially fund the construction of wetlands adjacent to St Mary's Island.

The opportunity for public review and comment on the proposed RP/EA announced in this notice is required under the Oil Pollution Act 33 U.S.C. 2706(c)(5), and parallels provisions of 15 CFR 990.14 (d) and 990.55 of the federal Natural Resource Damage Assessment regulations.

The Federal Consistency Determination for the Draft RP/EA outlines the basis for USFWS's determination that the restoration actions described in the Draft RP/EA are consistent to the maximum extent possible, and will be undertaken in a manner consistent with, the applicable policies of the Texas Coastal Management Plan (TCMP). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the goals and policies of the TCMP identified in 31 Texas Administrative Code (TAC) Chapter 501. Under 31 TAC §506.2(c), a determination of consistency with the TCMP must be made by the federal trustees for natural resource damage assessment and restoration plans that are the product of a joint cooperative natural resource damage assessment by state and federal trustees. Review of the Federal Consistency Determination is delegated to the State Trustee agencies (TPWD, TCEQ and the GLO).

Interested members of the public are invited to request a copy of the proposed Draft RP/EA and the Consistency Determination from Don Pitts of the Texas Parks and Wildlife Department, Trustee Program, 4200 Smith School Road, Austin, Texas 78744, (512) 912-7156, Fax: (512) 912-7160, e-mail: don.pitts@tpwd.state.tx.us.

DATES: Comments must be submitted in writing within 30 days of the publication of this notice to Don Pitts of the Texas Parks and Wildlife Department at the address listed in the previous paragraph. The Natural Resource Trustees will consider all written comments received during the 30-day comment period prior to finalizing the Draft RP/EA. The State Trustees will consider all comments received during the public comment period in their evaluation of the Federal Consistency Determination for the Draft RP/EA and will, depending on the comments received, submit a letter of concurrence to the Federal Trustees.

SUPPLEMENTARY INFORMATION: On October 20, 1994, three pipelines ruptured and began to discharge petroleum products directly into the San Jacinto River in an area near the Rio Villa Subdivision, Wallisville Road, Houston in eastern Harris County, Texas. Colonial Pipeline Company owned and operated two of these pipelines, a 36-inch line carrying diesel fuel and a 40-inch pipeline transporting gasoline, which discharged for six days. The remaining 20-inch crude oil pipeline, owned and operated by Texaco Pipeline Inc., discharged for three days. Final Colonial Pipeline Company estimate of the quantity of discharged diesel and gasoline totaled 34,527 barrels

(1,450,134 gallons). Final Texaco Pipeline Inc. estimate of the quantity of discharged crude oil was 5,350 barrels (224,700 gallons).

At the time of the unauthorized discharges, the San Jacinto River was receding from a high flood stage that spread out over the entire flood plain between Lake Houston and Galveston Bay. The water currents carried the petroleum products across the San Jacinto River flood plain and downstream to the Galveston Bay estuary.

Petroleum products were ignited as they flowed downstream and the fire traveled back upstream toward the sources of the unauthorized discharges. In the following days these fires continuously burned at the ends of the broken gasoline pipeline, the diesel oil pipeline, and one end of the crude oil pipeline. In addition, ignited petroleum products flowed downstream and burned riparian vegetation on mid-channel islands and adjacent shoreline riparian forests and wetlands, as well as numerous homes and other structures. The fires did not consume all of the discharged petroleum products. Significant quantities flowed downstream in the San Jacinto River to the upper portions of Galveston Bay.

As a result of the unauthorized discharge of diesel fuel, gasoline and crude oil and the resultant fires, numerous natural resources were affected. The discharged petroleum products and fires impacted terrestrial, freshwater and estuarine plants, sediments, wildlife, and invertebrates as well as freshwater and estuarine fishes. Water quality within the lower reaches of the San Jacinto River and upper Galveston Bay was impacted by the dispersion of the discharged materials into the water column.

The Natural Resource Trustees have the authority under OPA (33 U.S.C. Section 2701 et seq.) to assess the natural resource injuries resulting from this incident. The TPWD, TCEQ, TGLO, and USFWS are trustees of the natural resources injured by the discharges from the Colonial Pipeline Company and Texaco Pipeline Inc. pipelines crossing the San Jacinto River, Harris County, Texas pursuant to OPA, 33 U.S.C. Section 2706 (b).

The Natural Resource Trustees determined that natural resources subject to their trust authority under this act were exposed to gasoline, diesel and crude oil as a result of the unauthorized discharge. The quantity and concentration of the materials discharged and resultant fires was sufficient to result in injury to trust resources and information available to the Natural Resource Trustees indicates that trust resources were affected. Consequently the Natural Resource Trustees sought compensation for natural resource damages as identified in the Consent Decree lodged with the courts on September 17, 2001 after public review and comment.

The Draft RP/EA announced today identifies the information and methods used to determine and quantify natural resource injuries and lost ecological services, including the scale of restoration actions required to compensate the public. The Draft RP/EA also identifies the restoration actions that the Natural Resource Trustees propose to implement to restore, replace, or acquire resources or services equivalent to those lost. The Restoration Plan is in the form of an Environmental Assessment and, as such, is used as a planning document for the USFWS to use to decide on a final restoration plan (as required by the National Environmental Policy Act 42 U.S.C. 4321, et seq.).

For further information, contact Don Pitts at (512) 912-7156, fax: (512) 912-7160, email: don.pitts@tpwd.state.tx.us.

TRD-200503196

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Filed: August 2, 2005

## Public Utility Commission of Texas

### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 27, 2005, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Blu Power of Texas, LLC for Retail Electric Provider (REP) certification, Docket Number 31423 before the Public Utility Commission of Texas.

Applicant's requested service area by geography or/service area by customers includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 19, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31423.

TRD-200503208

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 2, 2005

### Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On July 22, 2005, Winstar Communications, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60027. Applicant intends to reflect a change in ownership/control.

The Application: Application of Winstar Communications, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 31400.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 17, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31400.

TRD-200503093

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 27, 2005

### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 26, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to Public



Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of Aero Communications, LLC for a Service Provider Certificate of Operating Authority, Docket Number 31414 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, T1-Private line, Frame Relay, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by SBC and Verizon.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 17, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31414.

TRD-200503096

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 28, 2005

◆ ◆ ◆  
**Notice of Application to Amend Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider**

Notice is given to the public of an application filed with the Public Utility Commission of Texas on July 22, 2005, to amend designation as an eligible telecommunications carrier and eligible telecommunications provider.

Docket Title and Number: Application of DIALTONESERVICES, L.P. (DTS) to Amend its Designation as an Eligible Telecommunications Carrier and an Eligible Telecommunications Provider in Certain Uncertificated Areas. Docket Number 31401.

The Application: DIALTONESERVICES, L.P. is seeking to amend its designation as an eligible telecommunications carrier and as an eligible telecommunications provider, and requests determination of per line support amounts in accordance with P.U.C. Substantive Rule §26.423.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 23, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31401.

TRD-200503094

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 27, 2005

◆ ◆ ◆  
**Notice of Petition for Expanded Local Calling Service**

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on June 7, 2005, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Talco Exchange for Expanded Local Calling Service, Project Number 31178.

The petitioners in the Talco exchange request ELCS to the exchanges of Gladebranch, Paris, Pittsburg, and Sulphur Springs.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 26, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 31178.

TRD-200503210

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 2, 2005

◆ ◆ ◆  
**Notice of Proceeding for 2005 Annual State Certification for Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds**

Notice is given to the public of the 2005 annual certification proceeding initiated by the Public Utility Commission of Texas for state certification of common carriers as eligible telecommunications carriers (ETC) to receive federal universal service funds (FUSF).

Docket Title and Number: Designation of Common Carriers as Eligible Telecommunications Carriers (ETC) to Receive Federal Universal Service Funds Pursuant to the Federal Communications Commission's Fourteenth Report and Order Adopting a State Certification Process. Docket Number 24481.

The Public Utility Commission of Texas (commission) initiated this proceeding in response to the Federal Communications Commission's (FCC) Fourteenth Report and Order adopting a state certification process. Under Section 254(e) of the Federal Telecommunications Act (FTA) carriers must use federal universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support was intended." The FCC concluded that it is appropriate for the state to certify that all federal high-cost funds flowing to rural carriers within the state of Texas are being used in a manner consistent with FTA §254(e). The commission is required to file such annual certification with the FCC and the Universal Service Administrative Company (USAC) on or before October 1 of each year. Absent such certification, carriers will not receive federal universal service support.

The certification requirement is applicable to all rural carriers and competitive eligible telecommunications carriers seeking high-cost support in the service area of a rural local exchange carrier that the state commission certifies as eligible to receive federal high-cost support during that annual period. In accordance with P.U.C. Substantive Rule §26.418(j), carriers shall certify directly to the commission in the form of a sworn affidavit executed by a corporate officer which certifies that the carrier is complying with the federal requirements for the receipt of FUSF support. All carriers within the state of Texas that request certification by the commission shall submit an affidavit on or before September 1st of each year.

Therefore, on or before September 1, 2005, carriers seeking to be certified should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512)

936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. Persons contacting the commission regarding this certification proceeding should refer to Docket Number 24481.

TRD-200503209  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 2, 2005

## Texas Department of Transportation

### Aviation Division--Request for Proposal for Aviation Engineering Services

Montgomery County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: Montgomery County, Lone Star Executive Airport.

TxDOT CSJ No.: 0512CONRO.

Scope: Provide engineering/design services to replace MIRL's runway 14-32, mark, overlay and improve drainage runway 14-32 and construct new hangar access taxiway.

The DBE goal is set at **5%**. TxDOT Project Manager is Bijan Jamalabad, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at [www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm) by selecting "Lone Star Executive Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

**Four** completed, unfolded copies of Form AVN-550 must be post-marked by U.S. Mail by midnight **Friday, September 2, 2005**. Mailing address: TxDOT, Aviation Division, 125 East 11th Street, Austin, Texas 78701. Overnight delivery must be received by 4:00 p.m. (CDT) on **Tuesday, September 6, 2005**. Overnight address: TxDOT, Aviation Division, 200 East Riverside Drive, Austin, Texas, 78704. Hand

delivery must be received by 4:00 p.m. (CDT) on **Tuesday, September 6, 2005**. Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at [www.dot.state.tx.us/business/avnconsultinfo.htm](http://www.dot.state.tx.us/business/avnconsultinfo.htm). All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Bijan Jamalabad, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200503087  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: July 27, 2005

### Aviation Division--Request for Proposal for Aviation Engineering Services

The City of Kerrville, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Kerrville, Kerrville/Louis Schreiner Field Airport. TxDOT CSJ No. 0515KERRV. Scope: Provide engineering/design services to relocate parallel taxiway to runway 12-30; install/relocate signage; relocate fencing and install erosion/sedimentation controls at the Kerrville/Louis Schreiner Field Airport.

The DBE goal is set at **5%**. TxDOT Project Manager is Harry Lorton, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at [www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm) by selecting "Kerrville/Louis Schreiner Field Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION:** To

ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Seven completed, unfolded copies of Form AVN-550 must be post-marked by U. S. Mail by midnight September 7, 2005 (CDT). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on September 8, 2005 (CDT). Overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. September 8, 2005 (CDT). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at [www.dot.state.tx.us/business/avnconsultinfo.htm](http://www.dot.state.tx.us/business/avnconsultinfo.htm). All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Harry Lorton, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200503188  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: August 1, 2005



#### Aviation Division--Request for Proposal for Aviation Engineering Services

The County of Limestone, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: Limestone County, Limestone County Airport. TxDOT CSJ No. 0409MEXIA. Scope: Provide engineering/design services to mark, overlay, widen and extend Runway 18-38; extend, mark and overlay parallel taxiway to Runway 18; extend and relocate MIRL, PAPI and signage; install erosion/sedimentation control and expand and overlay apron at the Limestone County Airport.

The DBE goal is set at 5%. TxDOT Project Manager is John Wepryk, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at [www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm) by selecting "Limestone County Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas

78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Seven completed, unfolded copies of Form AVN-550 must be post-marked by U. S. Mail by midnight September 7, 2005 (CDT). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on September 8, 2005 (CDT). Overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. September 8, 2005 (CDT). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at [www.dot.state.tx.us/business/avnconsultinfo.htm](http://www.dot.state.tx.us/business/avnconsultinfo.htm). All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or John Wepryk, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200503187  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: August 1, 2005



#### Aviation Division--Request for Proposal for Professional Services

The County of Limestone, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: Limestone County, Limestone County Airport. TxDOT CSJ No. 05EAMEXIA. Scope: To provide an environmental studies and/or evaluations for the project that consists of mark, overlay, widen and extend Runway 18-36; extend, mark and overlay parallel taxiway to Runway 18; extend and relocate MIRL, PAPI and signage; install erosion/sedimentation control and expand and overlay apron.

The HUB goal is set at **0%**. TxDOT Project Manager is Sandra Gaither.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, Phone number, 1-800-68-PILOT (74568). The form may be E-mailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn551.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.** Attention: To ensure utilization of the latest version of AVN Form-551, firms are encouraged to download AVN Form-551 from the TxDOT website as addressed above. Utilization of AVN Form-551 from a previous download may not be the exact same format. AVN Form-551 is an MS Word Template.

Seven unfolded copies of Form AVN-551 must be postmarked by U. S. Mail by midnight September 7, 2005 (CDT). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDT) on September 8, 2005. Overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Please mark the envelope of the forms to the attention of Sheri Quinlan. Hand delivery must be received by 4:00 p.m. September 8, 2005 (CDT). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating planning proposals can be found at [www.dot.state.tx.us/business/avnconsultinfo.htm](http://www.dot.state.tx.us/business/avnconsultinfo.htm). All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, the selection will be made following the interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Sandra Gaither, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200503189

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: August 1, 2005



#### Request for Proposals--Transportation Law Matters

The Texas Department of Transportation (department) requests proposals from law firms interested in providing legal representation required by the department and the Texas Transportation Commission (commission) on legal matters relating to the acquisition, lease, maintenance, construction, operation, and management of railroad lines and other rail facilities, including, but not limited to, abandoned railroad lines, and the acquisition of rail corridors and railroad rights of way for rail, highway or other transportation facilities.

**Description:** The department is a state agency that is obligated by state law to consider the advisability of acquiring rail lines that have been proposed for abandonment or discontinuance of service or of taking other action necessary to provide for continued rail or other transportation uses over the rail lines. Additionally, the department regularly considers acquiring rail corridors, rail facilities, and railroad rights of way for rail, highway or other transportation projects. The department is authorized under state law to acquire, finance, construct, maintain, and operate a passenger or freight rail facility, individually or as one or more systems. The department has a need to engage outside counsel to provide legal representation on matters relating to the construction, maintenance, operation, and lease of rail facilities, including trackage rights and service issues, and the acquisition of rail corridors, rail facilities, and railroad rights of way, and to provide legal advice concerning the department's rights and obligations with respect to a rail carrier's abandonment of or discontinuance of service on a rail line, including requirements relating to rail banking and termination of trail use under 16 U.S.C. §1247(d) and implementing regulations, as well as the handling of claims resulting from rail banking and termination of trail use. Counsel will also be expected to advise, counsel and perform work for the department generally regarding the department's responsibilities under applicable federal and state laws relative to rail and rail transportation. Outside counsel will represent the department in any necessary proceeding before the Surface Transportation Board, in negotiations with rail operators, construction companies, financial institutions, maintenance companies, and lessees; and will advise the department and the Transportation Division of the Office of Attorney General on matters relating to proceedings before the Federal Court of Claims. Accordingly, the department invites responses to this RFP from firms that are qualified to perform these legal services. Such firms must have considerable prior experience with, as well as extensive knowledge of, these subjects.

**Responses:** Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing legal work in the matters described previously, the names, experience, education, and expertise of the attorneys who will be assigned to work on these matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, location(s), and resources of the firm's offices that might serve the department's requirements, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Texas Department of Transportation, or to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas.

Note: The department is particularly concerned with issues of any conflict of interest(s). Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8 1/2 by 11 inch paper with all pages sequentially numbered, and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposal" and addressed to Richard D. Monroe, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, telephone Richard Monroe, General Counsel at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m., on August 29, 2005.

TRD-200503192  
Richard D. Monroe  
General Counsel  
Texas Department of Transportation  
Filed: August 2, 2005

◆ ◆ ◆  
**Texas Water Development Board**  
Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

City of Diboll, P. O. Box 340, Diboll, Texas 75941, received June 24, 2005, application for financial assistance in the amount of \$3,240,000 from the Drinking Water State Revolving Fund.

City of San Juan, 709 South Nebraska, San Juan, Texas 78589, received December 8, 2004, application for financial assistance in the amount of \$2,180,000 from the Clean Water State Revolving Fund.

City of Fort Worth, 1000 Throckmorton, Fort Worth, Texas 76102, received July 21, 2005, application for financial assistance in the amount of \$64,520,000 from the Drinking Water State Revolving Fund.

City of Redwater, P.O. Box 209, Redwater, Texas 75573, received June 21, 2005, application for financial assistance in the amount of \$470,000 from the Clean Water State Revolving Fund.

TRD-200503227  
Suzanne Schwartz  
General Counsel  
Texas Water Development Board  
Filed: August 3, 2005

◆ ◆ ◆

### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

☐ **Change of Address**

*(Please fill out information below)*

☐ **Paper Subscription**

☐ One Year \$240

☐ First Class Mail \$300

☐ **Back Issue (\$10 per copy)**

\_\_\_\_\_ Quantity

Volume \_\_\_\_\_, Issue # \_\_\_\_\_.

*(Prepayment required for back issues)*

NAME \_\_\_\_\_

ORGANIZATION \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY, STATE, ZIP \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_

FAX NUMBER \_\_\_\_\_

Customer ID Number/Subscription Number \_\_\_\_\_

*(Number for change of address only)*

**Payment Enclosed via** ☐ Check ☐ Money Order

Mastercard/VISA Number \_\_\_\_\_

Expiration Date \_\_\_\_/\_\_\_\_ Signature \_\_\_\_\_

Please make checks payable to the Secretary of State. Subscription fees are not refundable.  
Do not use this form to renew subscriptions.

Visit our home on the internet at <http://www.sos.state.tx.us>.

\_\_\_\_\_  
\_\_\_\_\_  
Periodical Postage

PAID

Austin, Texas  
and additional entry offices  
\_\_\_\_\_  
\_\_\_\_\_